

Exhibit B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)

SECURITIES INVESTOR)

PROTECTION CORPORATION,)

Plaintiff-Applicant,)

vs.) 08-01789 (SMB)

BERNARD L. MADOFF)

INVESTMENT SECURITIES, LLC,)

Defendant.)

In Re:)

BERNARD L. MADOFF,)

Debtor.)

Videotaped Deposition of BERNARD L.
MADOFF, VOLUME II, taken on behalf of the Customers,
before K. Denise Neal, Registered Professional
Reporter and Notary Public, at the Federal
Correctional Institution, 3000 Old Highway 75,
Butner, North Carolina, on the 27th day of April,
2017, commencing at 9:11 a.m.

* * * * *

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4

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1 THE VIDEOGRAPHER: This is Volume II of
2 the deposition of Bernard L. Madoff. My name is Ken
3 Morrison representing Veritext Legal Solutions. The
4 date today is April 27th, 2017 and the time is
5 9:11 a.m. This deposition is being held at Butner
6 Federal Correctional Facility located at 3000 Old 75
7 Highway, Butner, North Carolina 27509 and is being
8 taken by counsel for the Customers and Trustees.

9 The caption of this case is Securities
10 Investor Protection Corporation, Plaintiff-Applicant
11 versus Bernard L. Madoff Investment Securities, LLC,
12 Defendant. This case is being held in the United
13 States Bankruptcy Court, Southern District of New
14 York, Number 08-01789 (SMB).

15 At this time would attorneys please
16 identify themselves and whom they represent and the
17 witness is still under oath.

18 MS. CHAITMAN: Helen Davis Chaitman on
19 behalf of numerous former customers.

20 MR. GOLDMAN: Peter A. Goldman on behalf
21 of Bernard Madoff.

22 MR. SHEEHAN: David Sheehan, Baker
23 Hostetler, for the Trustee.

24 MS. FEIN: Amanda Fein, Baker Hostetler,
25 for the Trustee.

1 BERNARD L. MADOFF,
2 having been previously sworn, was further examined
3 and testified as follows:

4 FURTHER EXAMINATION

5 BY MR. SHEEHAN:

6 Q. Good morning, Mr. Madoff. How are you
7 today?

8 A. I'm good.

9 Q. Good. I want to just put something on the
10 record because Helen was so strict with it yesterday
11 and I agree with it, that the judge entered an order
12 we're not supposed to mention certain people's
13 names, and we were pretty good about that yesterday.
14 I intend to follow it here today.

15 A. Uh-huh.

16 Q. In fact, I may show you some documents that
17 I've redacted, but we're not going to get into the
18 person involved --

19 A. Okay.

20 Q. -- because I expect just as you did
21 yesterday, Helen, I want to strictly adhere to that
22 order. All right. So just want to put that on the
23 record, and you'll see the documents when we get
24 there. Just to put things in a little context, I'm
25 about to show you some statements, but before I do

1 that -- in fact, some that you've seen before from
2 Mr. Blecker; but before we do that I want to go back
3 to a little bit of where we were yesterday because I
4 had the chance to review yesterday's transcript and
5 just to clarify a few things about the convertible
6 arbitrage strategy.

7 A. Uh-huh.

8 Q. All right. One of the things that would be
9 helpful is this -- is that it may be better with my
10 putting it would have been, when would you receive
11 cash in lieu of fractional shares?

12 A. Actually, you know, I can't really tell you
13 because I didn't handle the operations side of the
14 business. So, you know, I don't know when that was
15 -- when that was done.

16 Q. But would it be fair to say that there is
17 no fractional share until you sell the convertible
18 security?

19 A. Well, it depends upon -- you know, it
20 depends upon whether it's actually converted,
21 whether -- whether it's just unwound or whether it's
22 swapped. In other words, the strategies don't
23 necessarily involve physically converting it where
24 you would get a fractional share. There were times
25 that the strategy is unwound where you're just

1 closing out the long and short position for the
2 customer either through the open market or you swap
3 it with another dealer and just swap -- swap the
4 position. So it's only if you were actually
5 converting it would you get the fractional share.

6 Q. Okay. Thank you. The strategy of a
7 discount convertible --

8 A. Uh-huh.

9 Q. -- is that scalable? And what I mean by
10 scalable is that you can take it from like ten
11 customers and then expand it to a thousand?

12 MS. CHAITMAN: Objection to form.

13 THE WITNESS: When you say scale it, you
14 mean -- I'm not sure what I understand what you're
15 talking about.

16 Q. (By Mr. Sheehan) Okay. Well, let's try
17 the reverse and under Helen's objection over there.
18 How would you define scalable?

19 A. Well, you're not scaling. If you're -- if
20 you're going to -- whatever you're buying, that's
21 the most that you can actually break up. So if you
22 bought 100 bonds, you may break that up for
23 argument's sake into five customers. You're not
24 scaling it. You're not -- you're not increasing,
25 you know, the trade other than what you actually

1 bought.

2 Q. What I was focusing on was your comment
3 yesterday when you referred to discount convertibles
4 as freaks. Are there enough of those, I guess, is
5 what I'm asking? Are there enough of those that you
6 could expand and sell a lot of those?

7 MS. CHAITMAN: Objection to form.

8 THE WITNESS: Well, clearly as I said
9 yesterday, the most -- most convertibles should be
10 trading at a premium because in theory you would not
11 -- you would not buy -- if you're a client, you had
12 a choice of buying the -- you know, the convertible
13 bond or buying the stock, if you can buy the
14 convertible bond at a discount, then you would
15 always want to buy the -- even if you weren't going
16 to sell the stock.

17 In other words, if you had a choice, do I
18 want -- I like this company. Do I want to buy, you
19 know, the stock or do I want to buy -- and it could
20 also had a convertible bond also and you could buy
21 the convertible bond, which would theoretically give
22 you the right to exchange that for stock, it would
23 be foolish, you know, to not buy the bond because
24 the bond gives you the protection of the coupon. So
25 but there are times like anything else that bonds,

1 you know, do trade at discounts, you know. It
2 depends upon people, you know, you know, they make
3 that decision up; but, I mean, the fact is that
4 convertible bonds sometimes trade at discounts,
5 sometimes trade at premiums, but clearly more of
6 them would trade at premiums than at discounts. It
7 also, by the way, depends upon whether you leg into
8 a trade.

9 In other words, it's a fallacy to think
10 that you're buying the convertible bond, you know,
11 at 10:00 o'clock in the morning and you're selling
12 the stock at 10:00 o'clock in the morning. It's not
13 a simultaneous transaction. Most trading that's
14 done in convertible securities I explained yesterday
15 is legging into it.

16 You're making a decision as to what the
17 market is going to do at the time. That's why it's
18 imperative that you have volatility. So and
19 depending upon whether you think the market is going
20 up or the market is going down, that's -- you would
21 start one leg versus the other leg.

22 Q. Following up on legging in, was it your
23 normal practice to buy the convertible security on
24 one day and not buy the short on the same day?

25 A. Not sell the short you mean?

1 Q. Not sell the short. Not sell the short on
2 the same day?

3 MS. CHAITMAN: Objection to form.

4 THE WITNESS: Sometimes yes, sometimes no.
5 It depends upon what was available.

6 Q. (By Mr. Sheehan) If you bought the -- or
7 sold the short the next day or day after --

8 A. Uh-huh.

9 Q. -- would that increase your risk?

10 MS. CHAITMAN: Objection to form.

11 THE WITNESS: Would it increase your risk?
12 Yes, of course.

13 Q. (By Mr. Sheehan) And why would that be?

14 A. Because you -- if the market collapsed, you
15 know, and the bond would go down, you wouldn't have
16 anything on the short side of the market to hedge
17 yourself with.

18 Q. All right. Okay. I believe that on
19 December 20th you used this term, but what's the
20 term VWAP stand for?

21 A. VWAP is volume-weighted average price.
22 That's when a firm puts in a lot -- basically, it
23 would be an institutional order where they decide
24 they want to buy 100,000 shares or sell 100,000
25 shares.

1 They give their order to a broker, you
2 know, and say I want a volume-weighted average
3 price. And the brokers, the fellow on the floor,
4 typically the floor broker would -- would sell that
5 out at his discretion over the course of the day.

6 And they -- they're competing against what
7 the volume-weighted average price, you know, of that
8 security sold during the day. We didn't do any
9 volume. We didn't do any VWAP orders basically.

10 Q. Okay. I wrote this down so I'd get it
11 right, so here it comes. Would it be your
12 expectation that prices you were able to get on
13 purchases of the convertible and sales of the common
14 would be more favorable, less favorable or
15 approximately equal to VWAP in those securities?

16 MS. CHAITMAN: Objection to form.

17 THE WITNESS: To VWAP?

18 Q. (By Mr. Sheehan) Yeah. To VWAP.

19 A. We didn't -- our general rule was we never
20 did handle VWAP orders.

21 Q. All right. Did you ever apply a VWAP
22 analysis to your trading?

23 A. No. Other -- I mean, the funds would --
24 might do that or some of our wholesale customers
25 would do that. We developed a system called time

1 slicing, which was -- had never been done before.
2 We built a system that we would -- someone would
3 give us a -- this was not part of basically an
4 arbitrage strategy.

5 There would be someone like Fidelity would
6 give us an order to sell 100,000 shares of stock.
7 And what we would do is we built a system, my sons
8 built a system where the order would be 100,000
9 shares would go into our technology platform and it
10 would -- they would say to us we want to sell this
11 hundred thousand shares over a period of
12 three-minute intervals.

13 It would go into the system. We would
14 program the order into the system and every three
15 minutes part of that order would come down into our
16 system and be -- go against our market makers'
17 quotes. And the average -- and the same strategy as
18 a VWAP, only it turns out that the -- instead of the
19 floor broker controlling the order, when to execute
20 the order, it would be the client who put the order
21 in like Fidelity were doing it.

22 It became very popular to do that because
23 it always for the general rule, you know,
24 outperformed the VWAP on the floor. And that was
25 the system that we had to get the approval of the

1 SEC to build that system.

2 Q. Uh-huh, thank you.

3 A. It's called time slicing.

4 MR. SHEEHAN: Let's get out the first
5 exhibit.

6 MS. FEIN: This was marked in the last
7 deposition as 14.

8 MS. CHAITMAN: Thank you.

9 Q. (By Mr. Sheehan) Yeah. Mr. Madoff, you've
10 just been handed an exhibit that was previously
11 marked on December 20th, 2016 as Exhibit Number 14.
12 It purports to be a 6-30-86 statement for an Arthur
13 Blecker?

14 A. Right.

15 Q. Okay. Just take your time and look at that
16 and then we're going to ask you a few questions;
17 okay? Okay?

18 A. Okay.

19 Q. Okay. Directing your attention to the
20 first entry at 6-30, 610 long 1501, do you see that?

21 A. Yes.

22 Q. What do you understand that entry to be?

23 A. It looks like a purchase of -- on 6-03 of
24 1501 shares of Interco 46.

25 Q. Okay. What's right underneath it? It says

1 preferred. What is that referring to? Do you see
2 that?

3 A. Preferred?

4 Q. Uh-huh. Preferred, sir.

5 A. Oh, that's just the -- it says preferred
6 convertible, preferred series D convertible.

7 Q. Right. So then go down to --

8 A. That's the full name of -- of the --

9 Q. Okay, fine.

10 A. Uh-huh.

11 Q. Then there's two further items down that
12 are both 6-5 --

13 A. Right.

14 Q. -- to 6-12. Could you tell us what those
15 two entries are?

16 A. Those look like sales on the 12th at -- of
17 the common stock.

18 Q. Okay. Now, it appears there's several days
19 difference --

20 A. Uh-huh.

21 Q. -- between the purchase of the convertible
22 security and the sale of the short?

23 A. Right.

24 Q. Is that something that would commonly
25 occur?

1 A. Yes.

2 Q. And why is that?

3 A. That's part of the legging transaction.
4 Obviously, you know, we bought the bond and then we
5 anticipated the stock going higher. So we waited
6 two days to sell the stock. You're at risk during
7 those two days that it's open --

8 Q. Okay.

9 A. -- but that's what we just discussed;
10 right?

11 Q. Right, okay. If you go on down, there's
12 another entry on 6-12 to 6-25. Do you see that,
13 Interco, Inc.?

14 A. Uh-huh.

15 Q. And it says fractional shares?

16 A. Right.

17 Q. Do you see that?

18 A. Yes.

19 Q. And it has a credit for it looks like
20 \$14.18?

21 A. Right.

22 Q. Do you see that?

23 A. Uh-huh.

24 Q. When do fractional shares occur?

25 A. Well, I would assume it is -- I assume that

1 it would come when it was converted.

2 Q. I see. But if you go down to the bottom --

3 A. Uh-huh.

4 Q. -- and the positions, isn't the preferred
5 still being held by you?

6 A. It's hard for me to read this thing.

7 It's --

8 Q. It's the same entry?

9 A. Yeah, yeah.

10 Q. All right.

11 A. Yes.

12 Q. Okay. So how could you have an entry for
13 fractional shares if you haven't sold it?

14 A. If we haven't sold it?

15 Q. Yeah, or you haven't converted it. I'm
16 sorry. You haven't converted the convertible
17 security. How could you have a fractional share?

18 A. I can't give you the answer to that because
19 I don't know what the procedure was. That's an
20 operations department procedure of what -- of how
21 they handled the fractional shares.

22 Q. One last question or maybe a couple more
23 questions. See at the beginning of the debit column
24 the price is 277 and change? See that?

25 A. Uh-huh.

1 Q. And then down at the bottom it's still
2 showing it at 277 at the end of the --

3 A. The last positions are mark to market. At
4 the end, those positions at the bottom are the
5 current market price at that time. It wouldn't
6 necessarily reflect what the market was at the time
7 this trades. In other words, they're now -- it's
8 showing that this is a -- that this is a long
9 position and a short position at what the market
10 price was at the end of the -- at the end of the
11 month.

12 Q. Isn't it unusual that the trade and the --

13 A. No.

14 Q. -- mark to market be the same?

15 A. No.

16 Q. No?

17 A. It depends upon what the market is. If the
18 stock didn't change, you know, I mean, you're
19 talking about, you know, what the price of the stock
20 is at the end of the month as opposed to, you know,
21 when it was purchased, you know, on 6-5. So you're
22 talking about, you know, the three-week period of
23 time.

24 Q. Who operationally would have handled this
25 trade?

1 A. The operation department?

2 Q. Yeah.

3 A. Well, depends upon when it was done. If it
4 was done in 1986, it would typically be probably
5 Annette's department. One of the -- I don't know
6 who would -- physically would have been doing it.

7 Q. Okay. Annette or someone working for her?

8 A. Someone, you know, on that -- you know, in
9 that area.

10 MR. SHEEHAN: Okay. Let's go -- I don't
11 know that we've marked the next one. Have we? So
12 let's mark it now. What's that?

13 MS. FEIN: Should we do it as Trustee 1 or
14 do I --

15 MR. SHEEHAN: Yeah. We're going to do
16 Trustee 1. Okay, Ellen? We're going to go Trustee
17 1.

18 MS. CHAITMAN: Yeah. That's fine.
19 Whatever you want to do.

20 MS. FEIN: Just two pages.

21 MR. SHEEHAN: That's fine. Why don't we
22 do this? Why don't you mark them all together?

23 MS. FEIN: Yeah.

24 THE WITNESS: Is it warm in here now?
25 Much warmer than today -- yesterday.

1 MS. FEIN: Yesterday was freezing.

2 THE WITNESS: I put on this shirt
3 underneath it because I was so cold yesterday.

4 MR. SHEEHAN: Mark all of these. That's
5 Trustee 1. This is going to be Trustee 2.

6 MS. FEIN: That will be Trustee 1.

7 MR. SHEEHAN: How should we mark this?

8 MS. FEIN: Trustee 1.

9 (Trustee Exhibit Number 1 was marked for
10 identification.)

11 Q. (By Mr. Sheehan) Okay, yeah. All right.
12 We're good. I apologize. Take a look at Trustee 1.
13 This actually consists of two pages. Do you see
14 that?

15 A. Uh-huh.

16 Q. Okay. Looking at the first page, could you
17 -- have you had a chance to look at it?

18 A. Yeah.

19 Q. Okay. If you look down at the -- this is
20 now for the following month. It's July 31, the end
21 of the month '86. Do you see that?

22 A. Right.

23 Q. All right. It's again Mr. Blecker's
24 account?

25 A. Uh-huh.

1 Q. And what is it showing as the end positions
2 there?

3 A. Right.

4 Q. What are they showing?

5 A. It's showing him long Interco convertible
6 preferred and short the common stock.

7 Q. So what does that mean to you?

8 A. What does it mean to me?

9 Q. Yeah.

10 A. He's still -- he still owns this -- the
11 bond and he sold short the stock.

12 Q. And that is -- so he --

13 A. The position is still open, in other words.

14 Q. Still open from early June?

15 A. From when it was -- yes.

16 Q. All right. Do you see under the debit
17 column again the amount of 277,309.75?

18 A. Uh-huh, right.

19 Q. Is that not supposed to be mark to market
20 there?

21 A. It would be the market, I'm assuming, you
22 know.

23 Q. So the market never changed from that
24 price?

25 A. It's possible.

1 Q. Okay. Let's go to the second page if we
2 could. Oh, what's that? It's a double-sided page
3 on mine.

4 MR. GOLDMAN: For you.

5 MR. SHEEHAN: Yeah. Not for you, though.

6 Q. (By Mr. Sheehan) Okay. So let's take a
7 look at that. Could you take a look at the top and
8 tell us what you understand this statement to be?

9 A. It shows the same types of securities,
10 Interco preferred, convertible preferred, and then
11 there's receive and delivery of the positions.

12 Q. Uh-huh, okay. Did a conversion take place
13 here?

14 A. I have no idea. It was either converted or
15 it was -- it was unwound or swapped. I can't see
16 whether it was -- if it was unwound, it would have
17 been -- it would have been actual prices that would
18 appear. I mean, I'm having a hard time reading this
19 thing.

20 Q. Yes.

21 A. But it would either be unwound or could
22 have been -- it could have been swapped. They could
23 have exchanged the positions to close them out
24 without going into the open market. We can swap
25 them with another dealer or we can swap them with a

1 bank and so on.

2 Q. Can you explain on the first statement that
3 we looked at that was -- it was number 14. It
4 showed that there was a -- the fractional shares are
5 shown there?

6 A. Right.

7 Q. Can you explain why those appeared six
8 weeks before?

9 A. I told you I'm not sure how they handled
10 the fractional -- the fractional shares. They
11 might -- for all I know is they might because
12 they're planning to convert it and they know they're
13 going to get a fractional share, they credit the
14 account with the fractional share.

15 I'm not familiar with the operations side
16 of the business, so I don't know how they physically
17 handle that. And also how they might have handled
18 it in 1986 might be different than how they handled
19 it, you know, at a later date because there were
20 different operations people and we had different
21 systems.

22 Q. I guess the question I have is how would
23 you get the price and the fractional share six weeks
24 before you converted it?

25 A. It depends upon whether -- I don't know how

1 they handled the fractional shares. So they might
2 be getting -- they value the fractional share and
3 what the price was at that time or, you know, I
4 don't know how they determined that.

5 Q. Okay. The next document, this is a
6 different, TRW?

7 MS. FEIN: Uh-huh.

8 MR. SHEEHAN: Okay. We're going to skip
9 it, try to get Pete out of here early.

10 MS. CHAITMAN: We're skipping 9-30-86? Is
11 that what you're doing?

12 MR. SHEEHAN: Yeah.

13 MS. CHAITMAN: Okay.

14 MR. SHEEHAN: All right. We don't need --

15 MS. CHAITMAN: There was a reference on
16 the record that this was a two-page document, but
17 it's much longer.

18 MR. SHEEHAN: Yeah, yeah. And I
19 apologize.

20 MS. CHAITMAN: No. Okay. I just wanted
21 to --

22 MR. SHEEHAN: It is indeed five pages.

23 MS. CHAITMAN: Okay.

24 MR. SHEEHAN: Okay. Sorry about that.

25 (Trustee Exhibit Number 2 was marked for

1 identification.)

2 MR. SHEEHAN: Put on the record what we're
3 doing; okay?

4 MS. FEIN: I'm marking as Exhibit 2 a
5 couple of consecutive customer statements, six
6 pages, the first page MF 00367785.

7 Q. (By Mr. Sheehan) I'll let you know for the
8 record that this is actually a six-page document.

9 A. Uh-huh.

10 Q. And take your time looking. You can look
11 at the first page, all the pages now, and just let
12 me know when you're ready; okay?

13 A. Okay. All right.

14 Q. So directing your attention to -- or
15 perhaps we should identify it first. This purports
16 to be a June 30, 1983 customer statement of Leonard
17 Alpern?

18 A. Uh-huh.

19 Q. And I'm directing your attention to the
20 entry 6-7, 6-14, Bancorp Hawaii, Inc. Do you see
21 that?

22 A. Yeah.

23 Q. What do you understand that entry to
24 represent?

25 A. You're talking about the journal, where it

1 says journal?

2 Q. No. It's --

3 A. You're talking about above that, the 6-7?

4 Q. 6-7, 6-14.

5 A. Okay. It looks to me like the purchase of
6 a convertible bond.

7 Q. Well, before that, though --

8 A. Oh.

9 Q. -- the 220, the short position?

10 A. Okay, yeah.

11 Q. What's that?

12 A. Looks like a sale of 220 shares of Bancorp
13 common at 27.

14 Q. And then on that same day just below that,
15 another short. What's that?

16 A. Same thing, stock at different price for a
17 larger amount of stock, 4,331 shares at 27.

18 Q. And then on 6-8 --

19 A. Uh-huh.

20 Q. -- there's a purchase there --

21 A. Right.

22 Q. -- of a long position. What's that?

23 A. That's the purchase of the -- of the
24 convertible.

25 Q. Is that consistent with the convertible

1 arbitrage strategy to sell the short before you buy
2 the convertible security?

3 A. Yeah. As I said, it depends upon what
4 direction you think the market is going to go.
5 Sometimes we would sell the stock before we bought
6 the bond, you know, and sometimes we'd buy the bond
7 first. That's a common practice in convertible
8 bonds, verbal trading.

9 Q. So when you buy and sell the short first,
10 you're at risk; are you not?

11 A. Yes.

12 MR. SHEEHAN: Okay.

13 MS. CHAITMAN: Objection to form. I think
14 you meant buy the -- didn't you mean --

15 MR. SHEEHAN: No. You sell the short.

16 MS. CHAITMAN: Oh, okay.

17 THE WITNESS: These are not ever
18 considered riskless trades, by the way, these types
19 of trading. The client is well aware of the fact,
20 you know, how the strategy works. That's legging.
21 That's the reason you can do these trades for the
22 most part successfully.

23 It is not -- you know, it is -- it would
24 be very, very difficult to have a simultaneous
25 transaction in a convertible security and generate

1 the kind of returns that we're anticipating, that
2 the strategy is designed for. So that's where the
3 skill of trading comes in and everybody that -- that
4 was sophisticated enough, theoretically every client
5 should have been, you know, the strategy was aware
6 of the fact. That's why the strategy made sense.

7 Q. (By Mr. Sheehan) Isn't the -- I'll put
8 this the correct way. If you sell -- buy the
9 convertible security and it's at discount and you
10 sell the stock short the same day, all right?

11 A. Right.

12 Q. Isn't that a risk-free transaction?

13 A. No, because depends upon what time, if you
14 may have bought the bond at 10:00 o'clock in the
15 morning and sold the stock at 2:30 in the afternoon.

16 Q. What if you did it simultaneously?

17 A. If you did it simultaneously --

18 Q. Yes.

19 A. -- it wouldn't be a risk providing you
20 bought it at a discount.

21 Q. Right, okay. Why wouldn't you always do
22 that then?

23 A. Because it might have -- the market
24 wouldn't allow you to do that. It wasn't available.

25 Q. All right. One thing I noticed is that

1 going back again to the sales of the shorts, do you
2 see the two entries?

3 A. Uh-huh.

4 Q. There are two different prices. Do you see
5 that?

6 A. Yeah.

7 Q. Why didn't you average them?

8 A. Because this -- this transaction, you know,
9 again, depending upon whether this order was part of
10 a larger -- of a larger order or not. I can't tell,
11 in other words. This might have been a stand-alone
12 order. In other words, there may have not been
13 other customers involved in this transaction or we
14 may have been -- you know, may have been able to buy
15 it all at the same price.

16 Q. As I understand, your criticism of Mr.
17 Dubinsky is that he didn't understand you were
18 average pricing; is that correct?

19 A. It depends upon whether you're talking
20 about the split strike or whether you're talking
21 about the convertibles and it depends upon when you
22 were doing and what individual order.

23 Q. Let's take that piece at a time. Why would
24 it be different between split strike and convertible
25 arbitrage?

1 A. Because of the size of the -- the size of
2 the orders, the size of the order that we were
3 executing, the number of clients involved in the
4 transaction.

5 Q. So the larger the order, what would happen?

6 A. The more you would spread it out over a
7 period of days and buy it -- or even if you did it
8 in the same day, you're buying it, you know, from
9 different brokers at different prices. You go into
10 the market to buy a thousand shares. You may be
11 able to go -- to buy all at the same price or you
12 may have to buy it at different prices from the same
13 broker or from different brokers.

14 Q. All right. And if you were doing the
15 convertible arbitrage strategy?

16 A. Do the same thing.

17 Q. Same thing. Okay. Since we're going to
18 end up going through all these, I'm just going to
19 direct your attention to the bottom of the page
20 again.

21 A. Uh-huh.

22 Q. And it shows the end positions. Do you see
23 that?

24 A. Right.

25 Q. Could you tell me what the two end

1 positions are?

2 A. It looks like you're long -- you're talking
3 about the Hawaii?

4 Q. Right.

5 A. You're long the Hawaii convertible
6 preferred and you're still showing an open short
7 position of Hawaii common stock.

8 Q. And look at the price there at the end of
9 the positions.

10 A. Uh-huh.

11 Q. Is it your testimony that's mark to market
12 there?

13 A. I would assume it's mark to market.

14 Q. Okay. Now, what -- and you can look at all
15 these, so and I'm just representing for the record I
16 always say the documents speak for themselves, that
17 if we were to go through each of these, as I
18 understand it what we would see is that the -- well,
19 maybe I shouldn't try to do that, try to speed
20 things up and I shouldn't. Let's go to the next
21 page if I could. All right? And this is a
22 statement from 7-29-83. Do you see that?

23 A. Yes.

24 Q. And again, the end positions are what?

25 A. Hawaii. You're short Hawaii common stock

1 and you're long convertible bonds, uh-huh.

2 Q. Okay. So that means that you're still
3 holding them since the 6-30, the 6-7 and 6-8
4 transactions?

5 A. Correct.

6 Q. Okay. And again, the price there under the
7 close-out is a mark to market price?

8 A. I'm assuming that they're mark to market
9 prices. You know, I'm not sure going back into '83
10 how they handled the -- whether they actually mark
11 to market at that stage or they just carried it
12 forward at the same price that it was bought at. I
13 don't know.

14 Q. Aren't you supposed to tell the customer
15 what their market value is?

16 A. No.

17 Q. And their positions?

18 A. No. You're not -- you're not obligated to
19 tell them. You're obligated to tell them -- you
20 know, obviously, what you wouldn't be able to do was
21 put a price on it that was totally unrelated to the
22 market, that would be unrealistic to the market
23 price; but typically our systems, you know, I'm
24 assuming that they were the same in '83 or, you
25 know, as they were, you know, at a later date. They

1 get mark to market by the system.

2 Q. Okay.

3 A. So that's why, you know, typically I've had
4 no reason to believe that it wasn't handled that way
5 in '83, but I can't tell you for sure.

6 Q. Again, would that be Annette or one of her
7 people doing this operational work?

8 A. It would be the -- it depends upon whether
9 the system did this or they did it manually.

10 Q. Okay. But would Annette Bongiorno be
11 responsible for the operational --

12 A. Someone in the -- well, someone in that
13 department. Back in '83, you know, there were
14 different people. It could have been Dan Bonventry,
15 you know. I don't know.

16 Q. Right. Let's go to the next statement.
17 This is August 31, '83 and there are three entries
18 there on August 8th. Do you see them?

19 A. And by the way, let me just correct
20 something so you know. Annette Bongiorno is
21 basically a bookkeeper. She's not really what we
22 would deem to be a senior operations person,
23 particularly in 1983. She's more of a bookkeeper
24 clerk. She's not a systems person or she's not a
25 cashier, an operations person.

1 Q. Let me clarify that then because when I
2 asked you earlier who would be responsible, you told
3 me Annette. Is there someone else who would have
4 been responsible?

5 A. She's responsible for the client. She
6 handles the client business. She doesn't -- like
7 she's not in the back office type of an operations
8 that receive or deliver or even the mark to the
9 market. That's not something that she would handle.

10 Q. In this '83/'84 time frame --

11 A. At any time.

12 Q. I understand that, but my question was
13 going to be in that time frame who would have been
14 that back office person?

15 A. I don't remember. It could have been Dan
16 Bonventry. It could have been, you know, Irwin
17 Lipkin. It could have been, you know, Sylvia
18 Hendel.

19 Q. All right. Let's turn as I was just going
20 to to August 31, 1983. Again, this purports to be a
21 statement for Leonard Alpern of that date. If you
22 would look at the entries for August 8th and tell me
23 what they represent to you?

24 A. August 8th?

25 Q. Yep.

1 A. Oh, it looks like the -- a purchase --
2 well, these are receiving -- this is a transaction
3 of warrants, forum group warrants. And these are
4 just receive and deliver of positions of forum
5 warrants.

6 Q. Yeah. Do you see what the entry there is
7 on 8-8 with regard to the preferred security?

8 A. On 8-8?

9 Q. 8-8.

10 A. Yes.

11 Q. There's an entry where it is you're
12 selling. Do you see that?

13 A. Monsanto?

14 Q. No. The Bancorp Hawaii preferred?

15 A. This looks like a receive and deliver.

16 Q. Right.

17 A. Uh-huh. That's not a buying or a sell.
18 That's a receiving.

19 Q. So you delivered in the convertible
20 securities?

21 A. That's the accountant was -- right.

22 Q. Does that mean you converted it?

23 A. It could have been converted, it could have
24 been swapped.

25 Q. What's a swap?

1 A. A swap is when you go in and you exchange
2 the position with -- for the customer with another
3 -- with another client or another -- a bank or
4 another dealer.

5 In other words, you had someone on the
6 other side of the transaction that -- if I have --
7 if a client is long on bond and short common stock
8 and you -- the trader is -- I determine that I want
9 to close out that transaction and rather than go out
10 and physically convert it into the other, I just
11 want to go ahead and go into the marketplace or go
12 into another dealer and say look, I'm willing to
13 convert -- I'm willing to exchange my bonds for
14 stock and so on and so forth. You wouldn't want it
15 that way.

16 Q. Okay. Let's go back to the 6-30-83
17 statement here of Mr. Alpern. So it's two back, I
18 think. June 30. And there's an entry there on
19 June 8th that's showing fractional shares being
20 credited to the account. Do you see that?

21 A. 6-30? Oh, the statement. Okay. Yeah,
22 right, uh-huh.

23 Q. The statement is 6-30, but the entry is
24 6-8?

25 A. Right, yeah.

1 MR. SHEEHAN: I'm sorry.

2 MS. CHAITMAN: Which line are you looking
3 at?

4 MR. SHEEHAN: I apologize. It's 6-15.

5 THE WITNESS: Okay.

6 MR. SHEEHAN: I'm looking at the wrong
7 line. I apologize.

8 MS. CHAITMAN: Okay. 6-15, okay.

9 Q. (By Mr. Sheehan) Yeah. 6-15, do you see
10 fractional shares?

11 A. Uh-huh.

12 Q. See that? Would that indicate to you that
13 it had been converted?

14 A. I'm responding the same way I said before.
15 I don't know whether it was converted or whether --
16 I don't know how they handled the fractional shares.

17 Q. And do you have an explanation of why you
18 would have fractional shares showing on 6-15 when,
19 in fact, the preferred wasn't delivered until 8-8?

20 A. I can't respond to that. I don't know how
21 they handled that. I'm not an operations person.

22 MR. SHEEHAN: Okay. All right.

23 (Discussion off the record.)

24 MR. GOLDMAN: I can see.

25 Q. (By Mr. Sheehan) Yesterday Ms. Chaitman

1 asked you about a meeting with the attorney's office
2 shortly after your arrest. Do you remember that?

3 A. Yes, yeah. Oh, yeah. Okay.

4 Q. Okay. Well, let me put it in context. I'm
5 going to represent to you that that meeting took
6 place on December 16th, 2008.

7 A. You're talking about down here?

8 Q. No, no. I'm talking about --

9 A. Oh.

10 Q. -- 2008, December 16th, days after your
11 turning yourself in as --

12 A. Right.

13 Q. Did you meet with -- do you recall meeting
14 with the U.S. Attorney and other representatives of
15 the SEC, et cetera?

16 A. Up in my house, in my apartment?

17 Q. No. I'm not sure the location. I wasn't
18 there.

19 A. Yes. It was in my apartment.

20 MR. SHEEHAN: Okay.

21 MR. GOLDMAN: Wait. Don't -- I don't
22 know, but are you confusing the FBI with the U.S.
23 Attorney's office?

24 THE WITNESS: No. There was a meeting
25 that was held that had a lot of people. They had

1 the FBI was up there. Marc Litt was on a conference
2 call, who was the prosecutor. There was a whole
3 bunch of people. There must have been 20 people up
4 in my apartment.

5 Q. (By Mr. Sheehan) That's the meeting I'm
6 referring to. I didn't know it was in your
7 apartment. I forgot you weren't incarcerated. You
8 were --

9 A. The only Trustee I remember being there was
10 the Trustee, I think, from London or from -- I don't
11 know if it was -- it wasn't Picard.

12 Q. No. He was not there.

13 A. No.

14 Q. Do you mean Mr. Akers?

15 A. I don't remember his name, but I remember
16 he was the Trustee from Price Waterhouse, I think.

17 Q. Okay. All right. And what was the purpose
18 of that meeting?

19 A. I don't really -- I don't know.

20 Q. Do you recall before the meeting signing
21 what's called a proffer statement?

22 A. Yes. That was at the -- that wasn't -- the
23 proffer meeting was, you know, before that.

24 Q. Right. What did you understand the proffer
25 statement to be?

1 A. That basically to just, you know, explain
2 to them what happened, how the fraud began and
3 started and so on. It was --

4 Q. Right. And were you aware that someone --
5 that the FBI was taking notes of that meeting?

6 A. I was aware that they were there. I don't
7 remember whether they were taking notes or not.

8 Q. Are you aware of the fact that they reduced
9 those notes to what they call a 302 statement?

10 A. No.

11 Q. Okay.

12 A. I don't know what that is.

13 Q. All right.

14 A. I think the FBI was standing at my piano.
15 They didn't seem to be taking notes because I
16 remember they were looking through the pictures of
17 my family at the piano. They didn't seem to have
18 much of an interest in what was going on. I don't
19 know why they were even there, quite frankly.

20 Q. Okay. And I think Ms. Chaitman already
21 asked you this, but when you spoke to that group
22 that day did you tell them the truth?

23 A. Uh-huh, yes.

24 Q. Okay. Let's -- I want to go back to
25 operations. We'll go back to 302 later, but the

1 operations of the business. And just to get some
2 clarity on that, and I want to start with house
3 five. All right. We call it house five. Did you
4 call it house five?

5 A. It sounds familiar, but yeah. That's not
6 my area.

7 Q. Okay. We understood that you called the
8 market making and proprietary operation house five.

9 A. That's what the operations department
10 called it, I guess.

11 Q. Okay, fine. It's not a term that's
12 unfamiliar to you; is it?

13 A. Slightly. I'm not sure.

14 Q. Okay. Well, then let's just call it market
15 making.

16 A. Uh-huh.

17 Q. When I say that, I mean both market making
18 and proprietary unless you tell me I'm wrong.

19 A. No. It sounds about right.

20 Q. Okay. And what I need to know is I'm going
21 to ask you some names and if you could just tell me
22 as you understood it, and I'm focusing on the '80s
23 now because we already talked about post-'92,
24 focusing on the '80s, what the work assigned to them
25 was, what they were required to do, et cetera, what

1 their jobs were. All right? And the first one is
2 Marty Joel.

3 A. He was a trader.

4 Q. Okay. In the market making?

5 A. Correct.

6 Q. Okay. David Kugel, I think we've heard
7 about him?

8 A. Same.

9 Q. Okay. Did he ever provide any assistance
10 in the investment advisory side?

11 A. Other than -- other than giving Annette's
12 department the correct formula to use when you were
13 handling a trade for a client.

14 Q. Okay. Andrew Madoff?

15 A. I think he started after '87; didn't he?

16 Q. Yeah. He was later.

17 A. He would have been proprietary trading and
18 market making at that time.

19 Q. What about Mark?

20 A. The same.

21 Q. What about Peter?

22 A. Peter was at one point a market maker,
23 involved in market making. I'm not sure of the --
24 I'm not sure of the dates. And then he also was a
25 compliance, handled the compliance for the firm and

1 systems. He did a lot of things, my brother.

2 Q. Okay. Now, how were the market make -- the
3 traders in market making, how were they compensated?

4 A. They get -- typically got a percentage,
5 25 percent of their net trading profit.

6 Q. And how was that calculated?

7 A. By whatever, you know, the back office
8 would come up with a figure of what the net profit
9 was based upon after deducting trading expenses.

10 Q. Okay. So let's say I did -- I'm going to
11 give you a hypothetical. You can correct it if I
12 say something wrong, but the trader does a trade for
13 50,000 shares of General Electric and he generates a
14 profit of \$25,000. All right?

15 A. Uh-huh.

16 Q. And then you take that 50,000 shares and
17 you move it over to the IA business as taking
18 inventory from market making; right?

19 A. Uh-huh.

20 Q. You said that's what you would do. How
21 does he get compensated at that point?

22 A. He doesn't -- the market making doesn't --
23 isn't compensated for anything dealing with a
24 client. The market makers get compensated on
25 basically what their profit was when they bought and

1 sold the stock, you know, from other dealers. The
2 market makers did not handle the customer
3 transaction. They weren't selling it. So the
4 market makers typically only dealt with other
5 broker-dealers.

6 Q. Okay. Did the traders have limits on the
7 amount of capital they could invest?

8 A. Yes, uh-huh.

9 Q. Would they be different for each trader?

10 A. Yes.

11 Q. Do you remember what David Kugel's was?

12 A. You know, I don't remember. Depends upon
13 the time frame, you know, we've been talking about.
14 They vary.

15 Q. I want to go back to Marty Joel for one
16 question.

17 A. Uh-huh.

18 Q. Did he do convertible arbitrage?

19 A. Yes.

20 Q. He did. Let's go to house 17, right, which
21 is the investment advisories?

22 A. Right.

23 Q. Okay. And if you can give me sort of the
24 employment history background of the following
25 people, what their jobs were, et cetera, which may

1 have changed over time.

2 A. Right.

3 Q. And if you could tell me that, that would
4 be good, too.

5 A. Uh-huh.

6 Q. Frank DiPascali?

7 A. What time frame are you talking?

8 Q. Let me start with when Frank started and
9 how his roles changed over time.

10 A. He started basically as a clerk.

11 Q. When was that?

12 A. I don't remember when he started, quite
13 frankly.

14 Q. Approximately. In the '70s, '80s?

15 A. Probably, I guess, in the '80s.

16 Q. Okay, fine.

17 A. I don't know.

18 Q. Okay. So he started as a clerk and then
19 what?

20 A. He started as a -- well, he started as an
21 assistant trader or clerk. He was, quite frankly,
22 never particularly -- he wasn't particularly
23 talented as a trader. He also had a problem with
24 attendance. He -- for some reason Frank had a
25 difficult time making the opening.

1 Q. Right.

2 A. So he -- he worked as a desk assistant,
3 which is basically a clerk for one of the other
4 market makers. That's how they get experience and
5 they learn. And depending upon what -- what the
6 trader that they're assisting thinks of his ability,
7 they then move up to being -- get a list of stocks,
8 you know, on their own as a market maker.

9 He never really had that. He was never --
10 he was never -- we never felt he was capable of
11 being a risk, what we call a risk trader, market
12 maker.

13 Q. So did he ever become a trader in your
14 market making operation?

15 A. No.

16 Q. So what he did do was -- I don't want to
17 put words in your mouth. He assisted? Would it be
18 fair to say he assisted the traders?

19 A. Yeah, yeah. He did. He assisted any
20 number of different traders, which was common. We
21 would move him around from different traders to
22 learn different aspects of the market making
23 business.

24 Q. Did there come a time where he did more
25 than being an assistant to a trader?

1 A. On the trading desk?

2 Q. No, outside. Did he move on?

3 A. He did move on. He moved on to handling
4 the clients, handling the actual, you know, breaking
5 up the strategies for the clients.

6 Q. Okay. Would he work on the convertible
7 arbitrage strategy?

8 A. Yes. At times, yep.

9 Q. Okay. And then did he work on the split
10 strike conversion strategy?

11 A. Yes.

12 Q. When did he -- as best you can recall, when
13 did he make that move to the customer side?

14 A. He was doing it in probably the maybe late
15 '80s to early '90s.

16 Q. Okay. What role did -- if any, did Frank
17 DiPascali play in turning to a split strike
18 conversion strategy?

19 A. He would have played a major role at that
20 stage, you know.

21 Q. What did he do?

22 A. He supervised all the other people. He
23 took instructions from me as to when we were going
24 to go into the market. And he was -- he was very
25 talented when it came to helping to build the system

1 that tracked the various baskets of securities and
2 so on. He did pretty much everything.

3 Q. Okay. So let's turn to Annette Bongiorno,
4 sort of the same thing. When did she start and what
5 was her employment history?

6 A. She started basically almost as a
7 receptionist when the firm had very few employees.
8 She was a bookkeeper, receptionist. People did
9 multiple jobs, you know.

10 Q. And did there come a time when she passed
11 beyond being just a receptionist and did other
12 things?

13 A. Yeah. I mean, you know, she learned --
14 because she came to work for us, you know, right out
15 of school. So she didn't know anything about
16 bookkeeping really or, you know, the stock market
17 and so on. So it was just a gradual process.

18 Q. Did she work on the market making side?

19 A. No.

20 Q. Did she always work on the customer side?

21 A. Yes.

22 Q. What -- when she went past being the
23 receptionist, what have you, what was her next role?

24 A. She -- I would say she moved from starting
25 to being sort of a combination secretary,

1 bookkeeper, you know. She did a lot of -- you know,
2 we didn't have a lot of people working for us. And
3 then she -- you know, she handled the customers.
4 She spoke to them on the telephone. They got
5 instructions. She answered questions about their
6 accounts and so on and so forth.

7 Q. Did Annette Bonjourno work on the split
8 strike conversion strategy?

9 A. For the most part she didn't have a major
10 role in that, no.

11 Q. What were the customers she was talking to
12 and working with?

13 A. She handled the big four clients was her
14 particular role. And also she ran a whole
15 department of other bookkeepers, you know, that
16 handled -- that were involved in doing the
17 processing of the split strike trades.

18 Q. Okay. Just a couple more. Jodi Crupi?

19 A. Jodi Crupi worked as an assistant to Frank
20 DiPascali and basically in the split strike, in the
21 convertibles. Primarily it was on the -- she was on
22 the 17th floor and she handled the checkbook, checks
23 in, checks out for clients and so on.

24 Q. Okay. And then, lastly, Joanne Sala?

25 A. Joanne Sala was in Annette's department,

1 basically was a bookkeeper.

2 Q. Okay. She reported to Annette?

3 A. Yes.

4 Q. Okay. Who -- I think you've already
5 answered this, but I want to just be sure. The
6 financial reporting --

7 A. Uh-huh.

8 Q. -- that was required of you as you ran it
9 individually or later as an LLC, who was responsible
10 for that financial reporting?

11 A. Financial reporting where? You're talking
12 about the focus reports?

13 Q. Like focus reports or any other SEC
14 inquiries or things like that.

15 A. Basically, that would have been -- well,
16 certainly me always from day one --

17 Q. Right.

18 A. -- you know, was the one that signed the
19 focus reports and reviewed the focus reports. It
20 would have been Irwin Lipkin, who was the --
21 considered to be the cashier originally. Then there
22 was a girl named Sylvia Hendel, who happened to have
23 been killed by a bus leaving the office one day.
24 That was in the '90s. She was the -- she had the
25 job that Enriquia Pitz took over.

1 Q. Okay.

2 A. So she compiled the focus reports at one
3 point. She worked with Irwin Lipkin.

4 MR. SHEEHAN: Okay. Let's take a break
5 right here; okay?

6 MS. CHAITMAN: Sure.

7 THE VIDEOGRAPHER: Going off the record.
8 The time is 10:11 a.m.

9 (A recess was taken and Trustee's Exhibit
10 Number 3 was marked for identification.)

11 THE VIDEOGRAPHER: Back on the record.
12 The time is 10:25 a.m.

13 Q. (By Mr. Sheehan) Mr. Madoff, you're about
14 to be handed Exhibit Number -- the Trustee's Exhibit
15 Number 3.

16 A. Uh-huh.

17 Q. And for the record, I will identify this as
18 a document that is copies of a Rolodex set of cards.
19 And the reason you have all, but we're not going to
20 ask you about all these pages here, we're going to
21 ask you about the first couple, but is that this is
22 a complete set of what was in that Rolodex. All
23 right. So we wanted to give you that.

24 A. Uh-huh.

25 MS. CHAITMAN: Whose Rolodex was it?

1 MR. SHEEHAN: It's Mr. Kugel's.

2 MS. CHAITMAN: David Kugel's. All right.

3 Q. (By Mr. Sheehan) So turning to the second
4 page, and these are double-sided so it's on the
5 left-hand side.

6 A. Uh-huh.

7 Q. Take a -- I'm going to actually only ask
8 you about the left and the right-hand side, those
9 two cards at this point. And take your time. Take
10 a look at it first. So my first question --

11 A. Uh-huh.

12 Q. -- is do you recognize the handwriting?

13 A. It's certainly not David Kugel's.

14 Q. Okay.

15 A. No.

16 Q. Do you know who it is?

17 A. No.

18 Q. Is any of this handwriting yours?

19 A. No.

20 Q. Okay. So it says on this, it starts -- and
21 I'm just going to read it. Obviously, the card
22 speaks for itself, but it says prices and then one
23 that's circled. It says look on calendar for work
24 to be done Tuesday through Monday. Do you see that?

25 A. Uh-huh.

1 Q. And then it says two, go back two Fridays.

2 A. Uh-huh.

3 Q. And three, that will give you your date to
4 start to present for instances 6-5 through 6-11?

5 A. Uh-huh.

6 Q. Start at 5-25-84 --

7 A. Uh-huh.

8 Q. -- through present?

9 A. Uh-huh.

10 Q. Now, what, if anything, does that mean to
11 you?

12 A. I'm assuming that they're giving whoever is
13 setting up the transaction instructions as to when
14 to look through the trading ledgers to see when we
15 -- what stock we bought or bonds we bought.

16 MS. CHAITMAN: David, if I can just
17 interrupt, whose handwriting is this? Do you know?

18 MR. SHEEHAN: Not -- I don't know.

19 MS. CHAITMAN: But you said it was David
20 Kugel's --

21 MR. SHEEHAN: It's his Rolodexes. He's
22 identified them in the past. I don't know whose
23 handwriting.

24 THE WITNESS: He would not have this.
25 This is not -- this would have nothing to do with

1 David Kugel. This is something that is -- would be
2 in Annette's department because David Kugel doesn't
3 even have a Rolodex. This would not be up in his --
4 you know, on his desk.

5 These were instructions to whoever is
6 actually going to put the trades through and it's
7 telling them to search through the firm's trading
8 ledgers and investment ledgers. It's looking
9 through the inventory to pick out, you know, what
10 prices or what stocks to use.

11 Q. (By Mr. Sheehan) Mr. Kugel has testified
12 that he would go back two weeks to find trades that
13 gave a predicted outcome?

14 A. Yeah. He could be looking at, you know, at
15 his market making trades in which, you know, what
16 bonds we bought, which then would go into the firm's
17 trading ledger.

18 So if, in fact, Annette would call him or
19 whoever called and say look, David, we have money in
20 that we need a million dollars' worth of
21 transactions for a convertible security, he would
22 look into his -- you know, his market making, you
23 know, trading which he had -- he had sheets as to
24 what he bought and sold and look at what -- what
25 stocks, what strategy was available, you know, for

1 that. So that's what they're asking him to do.
2 They're asking him to pick out a convertible that --
3 that he was able to set up, long the bonds and short
4 the stock at a particular price. That was his --
5 that was his job. That's where he made money.

6 Q. The testimony that he's given is that this
7 was done to give a predetermined profit to somebody?

8 A. No. Look, I tried to explain that to you
9 yesterday. That's not the way the trades are done.
10 Let me explain it to you. The market maker is
11 making -- that trades convertible bonds or whether
12 he trades stock, it doesn't matter. He's trading
13 convertible bonds.

14 The convertible bonds trader, whether it be
15 Marty Joel, whether it be David Kugel, whether it be
16 Mark Feldman or any other number of convertible
17 traders, their job is making a market and trading in
18 that convertible security, at which point they are
19 -- they're quoting to the -- out to the immediate
20 world what they want to buy bonds and short stock.

21 And they may turn around and set up the
22 trade. They'll buy bonds on Monday and sell stock
23 Monday afternoon or maybe they'll sell it Tuesday or
24 Wednesday and they have a -- they have a position, a
25 market making position being long on bonds and short

1 of stock. And they may have a -- as I said, they
2 may be planning to do this eventually to convert or
3 they may want to turn around and just unwind the
4 transaction, having nothing to do with the client.
5 You know, everything that the market makers buy and
6 sell doesn't typically go to a client.

7 It goes to the firm's account, and he
8 doesn't care whether we sell it to a client or not.
9 His profit and loss is based upon what he's able to
10 buy that stock. Then, you know, then that stock
11 goes into the firm's trading inventory. All right.
12 And at that stage of the game it's the firm's
13 inventory.

14 If, in fact, we have a customer that we
15 wanted to set up a trade for, what typically we do
16 is Annette or whoever would contact David and say
17 listen, we have money that we want to set up for a
18 client in a convertible bond. Did you have any
19 trades that you -- that looked like that would be a
20 good trade for a customer, you know?

21 He would -- you know, he would say yes.
22 Okay. I did trades in Bancorp or whatever it is and
23 he'd say just, you know, if you're going to set up a
24 trade in Bancorp, you have to buy the bonds, you
25 know, X number of bonds, short X number of stock.

1 They then would go and turn around, the next step
2 would be the person let's say on the 17th floor or
3 wherever they were located would then search through
4 the firm's ledgers and inventory or blotters, you
5 know, discount, and pick out those securities. And
6 then we're doing that.

7 All right. Now, that's -- then it becomes
8 a client trade. The market maker doesn't get
9 involved in that unless we're taking it out of his
10 inventory. And you then -- and the reason why the
11 market maker doesn't get any compensation on that,
12 because that's -- the firm is now charging the
13 customer a mark-up, which is a little -- can be
14 considered a commission equivalent.

15 And that's what the investment advisory
16 side is making their profit. The market maker
17 doesn't participate in that.

18 Q. Wasn't a mark-up just four cents a share?

19 A. It varied. It depends upon -- the
20 convertible bond market was different than the split
21 strike was -- used to be three cents, four cents,
22 three cents, then it went down to two cents; but the
23 convertible bond market could be a maximum of five
24 percent, which was what the NASD was. This was
25 years ago, but then we typically would be less than

1 it would typically be, a couple of percent.

2 Q. So when the traders trade with -- you know,
3 looking back to find a trade that's going to give a
4 profit to your customer --

5 A. Uh-huh.

6 Q. -- and you move that out of inventory, the
7 trader loses his income off of that?

8 A. No. He doesn't lose his income. He loses
9 that position.

10 Q. And does he get paid for the profit that
11 he's generated?

12 A. Yeah. Of course, he gets trade for the --

13 Q. I thought you said a moment ago he didn't?

14 A. He gets trade for his profit, what he's
15 buying and selling, you know. Once -- if the --
16 depends upon whether it remains in the trader's
17 inventory or whether it's moved out of the trader's
18 inventory.

19 Q. That's my point. If it goes into the
20 customer account --

21 A. Right.

22 Q. -- you give the profit to the customer;
23 right?

24 A. We give the profit of the trade to the
25 customer, yeah.

1 Q. Right. So how do you compensate the
2 trader?

3 A. He doesn't get compensated. His
4 compensation comes from his trading with our
5 customers. Most of his market maker's trades, you
6 know, have nothing to do with clients. It goes in
7 and out, you know, bought and sold and never even
8 appears in the customer transaction.

9 Q. But if you're using your inventory, if the
10 customer inventory is, in fact, market making
11 positions --

12 A. Right.

13 Q. -- are you paying twice on the profit?

14 A. No. He's -- once it's in his -- if it's in
15 the inventory and is not in a customer -- it's not
16 been used for a customer, then if the trader gets
17 mark to market, you know, and that profit or loss is
18 the trader's. Once it goes out of, once it's taken
19 out of our inventory --

20 Q. Right.

21 A. -- or out of the trader's inventory, he's
22 finished with it. That's it.

23 Q. Does the customer then get the same profit?

24 A. The customer gets the profit based upon
25 whether the -- you know, what happened with the

1 transaction, whether it was unwound, whether it was
2 converted and so on. They're two separate trades.

3 Q. Well, you mean you can actually realize
4 profit before the conversion or before the
5 unwinding?

6 A. No, not until the customer's trade is
7 closed out. Look, let me give you an example.
8 Let's assume -- let's assume you're forgetting about
9 a convertible trade or bond. Let's look at common
10 stock. Bear Stearns or Merrill Lynch, you know, has
11 a market making department. All right. The market
12 makers are trading the stock for the firm's account
13 and they're making profit or loss, you know, on
14 their -- whatever they're trading. All right.

15 Q. Yeah.

16 A. They then -- they then, you know, take
17 from -- the market makers shows the position of long
18 a thousand shares of stock at ten. If that -- if
19 that now goes -- you know, the salesman is looking
20 to buy stock for one of his clients at ten.

21 Q. Right.

22 A. He goes in and he's going to buy it from
23 the firm's inventory at ten and charge the customer
24 a commission. Once the stock is taken out of the
25 firm's inventory for the market maker, he's out of

1 the picture anymore depending -- you know, because
2 the stock is now sold to a client. So the client's
3 -- if the client bought the stock at ten, the market
4 maker may have bought stock at ten and he -- you
5 know, and then turned around, stock went up to
6 eleven.

7 And, you know, that's his profit, from ten
8 to eleven. Now the customer comes into the
9 transaction to buy the stock at eleven, you know,
10 and the stock may go up to twelve. That's the
11 customer's, you know, profit or the commission
12 involved, has nothing to do with the trader.

13 Q. I understand that, but what I was saying,
14 when you're dealing with a convertible arbitrage
15 strategy doesn't a profit always occur when you
16 either unwind it or you convert it?

17 A. Yes, yeah.

18 Q. And doesn't that always happen in the
19 customer account if you take it out of inventory and
20 put it in the customer's account to give them that
21 profit?

22 A. That's right.

23 Q. Okay. So then whatever profit was there is
24 lost to the trader because now you've taken it out
25 and given it to the customer?

1 A. Yeah, but he -- it's -- I'm not sure I
2 understand what you're trying to get at.

3 Q. Well, he can't make a profit in the market
4 making operation until he either unwinds it or he
5 converts it; right?

6 A. If --

7 Q. You're saying that you look back and you
8 see that sitting there and you realize I'm going to
9 take that out of there and give it to a customer and
10 give them that profit.

11 A. Uh-huh.

12 Q. And you do; right? That's your market
13 making or your convertible arbitrage strategy?

14 A. For the customer, right.

15 Q. Right. But if you take it out of the
16 inventory of the market maker, he can't get any
17 profit because --

18 A. No. He doesn't. His profit was made on
19 transactions that had nothing to do with the
20 customer, just buying and selling the stock, you
21 know.

22 Q. All right. I think we've gone over it
23 enough. Let me ask you this. When you were doing
24 the split strike conversion strategy, you know, in
25 the '90s and not buying stock --

1 A. Uh-huh.

2 Q. -- how would you arrive at the prices that
3 you would put into the basket?

4 A. Based upon, you know, what the stock was
5 selling at at that price.

6 Q. Would you not look back and figure out what
7 the stock was so you would always sell -- sell high
8 and buy low?

9 A. No. In other words, the -- that was all
10 done by a system that we had dynamic systems. We
11 had ticker feeds that came into the firm. And the
12 split strike, there was a program built that would
13 monitor the stocks that were in the basket, you
14 know. So that was all done automatically. It
15 wasn't that we went back and, you know --

16 Q. You didn't do it with hindsight?

17 A. No.

18 Q. You didn't use yesterday's newspapers?

19 A. No.

20 Q. All right. If I told you that VWAP for you
21 is at 80 percent, you know, profit --

22 A. Uh-huh.

23 Q. -- what would your comment be on that?

24 MS. CHAITMAN: Objection to form.

25 THE WITNESS: I'm not sure I understand

1 what you're asking me.

2 Q. Okay. In other words --

3 A. VWAP is --

4 Q. -- if you're doing VWAP, what's good VWAP,
5 a good percentage?

6 A. VWAP refers to what was bought and sold.
7 It has nothing to do with what a profit is. VWAP is
8 measured based upon what -- what actually took place
9 on the floor of an exchange if, in fact, you were
10 executing the order. It's not -- it would have
11 nothing to do with split strike.

12 Q. Doesn't it have to do with best price?

13 A. It has to do with what you would have been
14 -- what you would have been able to execute an order
15 at --

16 Q. Right.

17 A. -- on the floor. In other words, what
18 actually took place on the floor.

19 Q. And price is part of that analysis?

20 A. Yeah, of course.

21 Q. Right. And when you were selling in the
22 split strike, you said you never did a VWAP
23 analysis?

24 A. No.

25 Q. All right. If you did one, would you be

1 surprised to know that you always sold -- 80 percent
2 of the time you sold high?

3 MS. CHAITMAN: You sold what?

4 MR. SHEEHAN: High.

5 THE WITNESS: First of all, let me explain
6 something to you.

7 MS. CHAITMAN: Objection to form.

8 THE WITNESS: The VWAP, the VWAP is trades
9 that took place on the floor of the exchange, has
10 nothing to do with what took place over the counter.

11 MR. SHEEHAN: Right.

12 THE WITNESS: So it wouldn't equate to us
13 because VWAP, a VWAP is measured on floor
14 executions. Our executions were -- our executions
15 if we were executing would have been over the
16 counter. It wouldn't matter.

17 Q. (By Mr. Sheehan) You mean all the stocks
18 that you had in your split strike baskets were
19 over-the-counter trades?

20 A. Yes.

21 Q. The stocks themselves?

22 A. Yeah.

23 Q. Not the calls and puts?

24 A. No. The stocks themselves. We were the
25 largest third market maker in the country.

1 Q. So --

2 A. Madoff was known as the largest third
3 market dealer in the country. You know, all of our
4 transactions that we did with hundreds of our
5 brokerage firms --

6 Q. Yeah, but --

7 A. -- and listed securities was done over the
8 counter. They weren't stock exchange. They weren't
9 even reported to the stock exchange.

10 Q. You never put any of your split strike
11 trades to your market making?

12 A. No. We didn't do the trades. The clients
13 thought we were doing the trades over the counter.
14 They never assumed that we were doing them on the
15 floor of an exchange because our business was
16 over-the-counter dealing.

17 Q. So when you traded 200 million shares of
18 Microsoft, you did that OTC?

19 A. Yes. Well, first of all, Microsoft isn't
20 listed on the exchange anyway. Let's say -- let's
21 say IBM --

22 Q. Right.

23 A. -- which is a listed security. We were not
24 -- our trades weren't done on the floor of the
25 exchange. With Merrill Lynch when Merrill Lynch

1 bought stock from us, they were buying that -- that
2 was an over-the-counter transaction even though it
3 was a listed security.

4 Q. When you say listed, you're limiting
5 activity to --

6 A. Listed on the --

7 Q. New York Stock Exchange.

8 A. It's eligible to list on the -- it's a
9 stock that is listed over -- look, today, for
10 example, 70 percent of the New York Stock Exchange's
11 listed securities are transacted over the counter.
12 They're not -- they're transacted through the black
13 -- the dark pools. They're transferred -- they're
14 executed through dealers like Madoff.

15 Only 30 percent of them actually take place
16 on the floor. So when you look at a VWAP order,
17 that's a VWAP is reflecting to trades that took
18 place on the floor of the exchange. They're not
19 taking -- they have nothing to do with an
20 over-the-counter transaction even though it's a
21 listed security.

22 Q. Okay. All right.

23 A. You know, I want to interject something.

24 Q. You go right ahead. I love when witnesses
25 volunteer.

1 A. You asked me about David Kugel and how
2 could he have said certain things.

3 Q. Right.

4 A. I'm not sure -- if you were asking these
5 questions of David Kugel right now, he would
6 probably be as confused as let's say he would be
7 going through exactly what you're doing by saying,
8 well, did you -- how did you set this transaction
9 up?

10 And David Kugel would say to you, well, I
11 go back and I look at my transactions of what I did,
12 you know, in this particular security, you know,
13 four or five days ago because I know that that
14 security is in the inventory. All right. So that
15 was -- there were bonds bought and stocks bought
16 because he bought and sold them. So now -- and he
17 may have bought them for his market making account.

18 He may have bought it for the firm's
19 investment account. And he'd say yeah, that's a
20 transaction you should do. All right. That -- he
21 gives that information to now the operations
22 department, let's say Annette's department. They
23 then go and they look through. If you -- if for
24 some reason you interpreted what David said is that
25 he actually set up the transaction, that he went

1 back and looked at prices, it was not what you -- he
2 wasn't selling, going to use the prices that I
3 bought in stock for. He would be looking -- looking
4 for the firm's -- now that's in the firm's
5 inventory. It's different. There's a market making
6 inventory and then there's the firm's inventory.

7 Q. I understand, but just to stick with that
8 for a minute. All right?

9 A. Okay.

10 Q. So David executes a split -- not a split
11 strike. A convertible arbitrage strategy?

12 A. Uh-huh.

13 Q. Let's say he even does it on the same day.
14 All right. So he's got profit built in risk-free.
15 It's two weeks later. That trade actually happened.

16 A. Right.

17 Q. Right. And when he puts into the -- you
18 put into the customer statement is that exact trade,
19 but there's no profit because there was no trade?

20 MS. CHAITMAN: Objection to form.

21 THE WITNESS: I don't know what you mean.

22 Q. (By Mr. Sheehan) No. In other words,
23 you're taking history, all right, the trade that
24 David just did and which he made a profit and now
25 you're taking that and putting it into the customer

1 account --

2 A. No. I'm not.

3 Q. -- as though there's a real trade when
4 there really wasn't a real trade?

5 A. I'm not -- I'm not putting it into the
6 customer account, you know.

7 Q. Well --

8 A. Putting it into the customer account from
9 the firm's trading account or inventory, not from
10 David's account.

11 Q. But we were looking this morning at Mr.
12 Blecker --

13 A. Right.

14 Q. -- and there is no fractional share until
15 you actually convert, and yet you're showing a
16 fractional share six weeks early. How could you do
17 that unless you were backdating the trade?

18 A. It's -- look, I told you that I'm not sure
19 how they -- look, if I am selling stock from the
20 firm's -- if I set up a trade for Blecker, all
21 right, and the firm came -- and it came out of the
22 firm's inventory --

23 Q. Right.

24 A. -- it has nothing to do with David Kugel
25 let's assume, the market maker. It's not in the

1 firm's inventory. All right. That stock got into
2 the inventory from the market making, but now it's
3 in the firm's inventory. And the firm -- we decided
4 to keep -- I decided to keep that stock in the
5 inventory. Now, anything that happens in that stock
6 moving up and down is the profit to the firm. It
7 has nothing to do with David Kugel. He sold it, his
8 position that he sold to the firm.

9 Now the firm has that. It's not David's
10 any longer. All right. Now, that inventory is in
11 the firm's account. Now I'm turning around and
12 selling that, you know, at the time that the prices
13 that I bought it at to the client. That's an actual
14 transaction from -- you know, from the firm's
15 inventory to the client's inventory.

16 If, in fact, you know, I set it up with the
17 -- with the intention of actually converting the
18 security, all right, but, you know, I don't know how
19 they -- if, in fact, they were going to convert the
20 security, I don't know -- and they decide that if
21 they actually were going to convert it, the client
22 would be entitled to a fractional share.

23 They're going to give the fractional share.
24 When they actually converted it, they would have
25 gotten the equivalent of the fractional share. If

1 for some reason they never converted it, the
2 customer would have gotten the fractional share
3 anyhow or the monies for the fractional share.
4 That's coming out of the firm's profit and loss.
5 It's the firm's responsibility.

6 Q. But if it's not converted, there is no
7 fractional share; is there?

8 A. Yeah, but let's say that the firm sold it
9 to the client. All right. As far as the client is
10 concerned, he'd be entitled to the fractional share.
11 If I decided to swap it and not convert it, all
12 right, I'm now buying the customer's position back
13 from the customer. And, you know, the fact that the
14 customer got the -- the customer is -- you know, is
15 getting the profit as if it was actually converted.

16 Q. Well, I want to go back to something you
17 said earlier. You were saying that say David does
18 the trade, the convertible arbitrage.

19 A. Uh-huh.

20 Q. He then you say sells it to the firm, so
21 the firm owns it; is that correct?

22 A. That's right.

23 Q. What does he sell it for?

24 A. What does he --

25 Q. Well, it still hasn't been converted or

1 unwound, so you don't know what the profit is. So
2 what are you paying him for that?

3 A. I'm trying to explain something to you.
4 The firm has positions, you know, in convertible
5 securities in the firm's trading account, investment
6 account. And then David has his market making
7 account.

8 Q. Right.

9 A. It has nothing to do with the client. He's
10 not buying -- it's not his stock that is going to
11 the client until this -- until the firm takes the
12 stock from David. Then the firm -- it's like two
13 separate transactions. It's not -- it's not David.
14 David has a market making account and he buys and
15 sells in that and he may buy on a Monday and sell it
16 out on Tuesday.

17 And while it's in his account, the profit
18 and loss is David's. All right. If I now am taking
19 that stock from David into the firm's account, then
20 the profit and loss is mine and it has nothing to do
21 with David.

22 Q. That's okay, but it's a stock. I'm not
23 talking about --

24 A. Or convertible bond. It doesn't matter.

25 Q. But you don't know what the profit is until

1 you convert or unwind?

2 A. What profit are you talking about?

3 Q. The profit on the convertible arbitrage
4 strategy.

5 A. For the customer?

6 Q. Yeah.

7 A. It's whatever -- then it's not the firm's
8 account. It's the customer's account. Whatever
9 we've set it up for the customer, that's his. If we
10 converts it, then he's -- the price has already been
11 -- the profit has already been determined based upon
12 what he bought and sold at. All right.

13 If, in fact, I now unwind it for the
14 customer, if I swap it out and I take it back, you
15 know, from the customer and it goes back into the
16 firm's account, then the customer -- you know, then
17 it's the firm's position. In other words, you seem
18 to -- you seem to not be grasping that the -- the
19 fact that, you know, these are separate
20 transactions, you know. If, in fact, I -- let's
21 assume that I wanted to just short the transaction
22 to a customer.

23 Q. Right.

24 A. All right. And I made a decision that --
25 well, let's look at it this way. Let's assume the

1 customer calls me up and says I want to buy -- I
2 want to buy this convertible bond. I want to do an
3 arbitrage. Let's say the customer is making a
4 decision. He says, you know, you know, I want to --
5 I want to, you know, do arbitrage in Bancorp
6 convertible bonds.

7 You know, I want you to go ahead and buy
8 the Bancorp and sell the common stock and do the
9 arbitrage. Okay. And I turn around and I say all
10 right, you know what? I'll sell you that
11 transaction. You know, I'm going to short it to you
12 let's assume.

13 I'm going to short you the -- I'm going to
14 short you -- rather than me go out into the open
15 market and buy it, there's nothing to prevent me,
16 you know, from selling it to the customer. I'm
17 selling the convertible bond and I'm buying the
18 stock from the customer. The customer is shorting
19 me the stock and I'm buying the bond.

20 Q. Right.

21 A. Okay. Now, as far as the customer is
22 concerned if he gives me instructions to convert it,
23 you know, then we would physically have to -- you
24 know, we would have to physically convert the stock.
25 Now, if, in fact, I'm shorted to him, you know,

1 obviously, I can't to convert it because I shorted
2 the position to him; but if the customer says, well,
3 listen, I want to close out the transaction. So I
4 said okay, I'll buy you -- I'll unwind this
5 transaction for you. I'll buy your convertible bond
6 and I'll sell you the stock that you were short.

7 And had we converted, I'm giving you a
8 fractional share. I would owe you a fractional
9 share. So I'm crediting the account with the
10 transaction. Now, in that type of transaction the
11 transaction never actually took place on a -- you
12 know, it took place because as a market maker and
13 dealer, I shorted the transaction to the customer.

14 As far as the customer is concerned, he
15 makes the profit. He's that. If, in fact, I lost
16 money, that's his -- that's my problem. He doesn't
17 care about it.

18 So, you know, every transaction if you call
19 up your brokerage firm at Merrill Lynch and you say
20 I want to buy IBM, all right, and Merrill Lynch
21 turns around and, you know, puts that order and puts
22 it on the floor of the -- the floor of the exchange,
23 the floor broker goes down into the specialist and
24 says to the specialist I want to buy IBM. And IBM
25 is trading -- you know, I look in the machine, it's

1 trading at, you know, 95. And the specialist, he
2 doesn't have an inventory or he thinks that stock is
3 overpriced at 95. So who shorted to the floor
4 broker at Merrill Lynch? Merrill Lynch's floor
5 broker reports to you. You just bought IBM and long
6 it.

7 Q. Right.

8 A. Okay. The transaction never took -- never
9 took place. It took place because the specialist
10 shorted it to you, you know. As far as you're
11 concerned, Merrill Lynch treated you as an agency.
12 Merrill Lynch charges you a commission. All right.
13 And anything that happens that you can sell that
14 stock tomorrow or in two days, the specialist,
15 that's his problem. He's short the stock to you.

16 Q. Yeah. It's his --

17 A. No different than like if I --

18 Q. Okay.

19 A. If you ask the average client that I told
20 you yesterday, you know, when you put an order in
21 that you buy IBM or Microsoft, that customer I
22 guarantee you, you ask him what happens in that
23 transaction. He will tell you, well, I bought
24 shares in IBM. And IBM, he thinks that IBM got that
25 money.

1 I guarantee you that's -- because I know
2 that because there have been surveys taken.
3 Customer thinks that when he buys IBM, that IBM, he
4 bought the shares from IBM.

5 Q. Right.

6 A. That's what he thinks.

7 Q. I understand.

8 A. Okay. He didn't buy it from IBM.

9 Q. I know that.

10 A. Okay. I know you know it, but I'm telling
11 you the -- what I'm trying to tell you, what I think
12 you're having a hard time grasping is whether or
13 not, look, you think that if, in fact, for some
14 reason if I wanted to short all of these
15 transactions to these customers --

16 Q. Yeah.

17 A. -- you would think that these transactions
18 never took place. That's not true. They took
19 place. Now, we don't short. We'd short some stocks
20 to customers clearly, but whether it be convertible
21 bonds or arbitrage.

22 Q. Right.

23 A. Sometimes we short them, which is perfectly
24 normal, and sometimes we buy them. The transaction
25 as far as the customer is concerned, he has a real

1 transaction.

2 Q. Yep. I understand.

3 A. Okay.

4 Q. Let's turn to the Madoff exemption.

5 A. What?

6 Q. The Madoff exemption.

7 A. Okay.

8 Q. Are you familiar with that term?

9 A. Yes.

10 Q. What is the Madoff exemption?

11 A. The Madoff exemption is that market makers
12 are allowed to short stock.

13 Q. Can they short stock in market making
14 transactions?

15 A. Anywhere they want.

16 Q. So they can also -- does a market maker
17 normally deal with customers?

18 A. Sure.

19 Q. All right. Aren't they -- they're
20 operating then as what, broker-dealer?

21 A. Uh-huh.

22 Q. You're not a market maker in that capacity?

23 A. All market -- the definition of a market
24 maker is someone that -- that puts out a two-sided
25 quote in a security and publishes his bids and

1 offers in a vending service. And he's obligated to
2 honor his quote. He stands ready to buy or sell.

3 MR. SHEEHAN: All right. Okay.

4 MR. GOLDMAN: We can take a -- what to
5 take a --

6 MR. SHEEHAN: We'll do it now; all right?
7 Yeah. Only because I may be able to eliminate some
8 stuff, which would be a good thing because we've
9 covered a lot of territory.

10 THE VIDEOGRAPHER: Going off the record.
11 The time is 10:58 a.m.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: Back on the record.
14 This begins disc Number 2. The time is 11:14 a.m.

15 Q. (By Mr. Sheehan) Mr. Madoff, while we were
16 off the record you indicated you wanted to explain
17 something to me?

18 A. Yeah.

19 Q. Go right ahead.

20 A. I just want to explain that when we are
21 doing a transaction for -- an arbitrage transaction
22 for a customer in a convertible and we set the
23 transaction up for the customer as if it was going
24 to be converted, all right, I'm not sure how they --
25 as I say, I don't know how they handled the

1 fractional shares during certain times periods; but
2 they may -- they may determine that the customer is
3 going to get that fractional share if, in fact, the
4 transaction was converted.

5 All right. So they may -- they may credit
6 the customer with a fractional share knowing that
7 they're going to convert it or that's what the plan
8 is to convert. If for some reason at a later date
9 they decided not to convert it, they swapped out the
10 transaction, the customer really should get the
11 fractional share because the fact that we decided to
12 not convert it but we decided to unwind the
13 transaction or swap the transaction, the customer if
14 we didn't credit the customer with the fractional
15 share, we'd be disadvantaging the customer. Now, so
16 they may determine to do the fractional share before
17 the transaction is actually converted because it may
18 not be converted, but they would -- they typically
19 would do that or they could wait.

20 If we wanted to we could theoretically if
21 we unwound the transaction and not convert the
22 transaction, we wouldn't have to give the customer
23 the fractional shares. So but that's the firm's
24 decision to make when they do it. I don't know how
25 they particularly handle that because that's not my

1 area, but it doesn't mean any -- the fact that --
2 the fact that we credited a customer with a
3 fractional share but physically never converted it
4 does not -- does not demonstrate anything other than
5 the fact that the transaction was not converted. It
6 was -- you know, or that it could have been -- it
7 could have been converted.

8 We could have credited them before the
9 conversion actually took place. The firm would have
10 gotten -- would have gotten the fractional share
11 that would have been covering the course that he did
12 it. It doesn't -- you seem to be going down a path
13 with this fractional share as if it has some sort of
14 significance, but it doesn't.

15 Q. Well, just to follow up on that --

16 A. Okay.

17 Q. -- if the fractional share is credited on
18 the day the preferred is purchased --

19 A. Correct.

20 Q. It was the preferred in the example.

21 A. Whatever.

22 Q. All right. It's computed on that day;
23 correct?

24 A. Uh-huh.

25 Q. So now it's sold six weeks later; right?

1 A. (Witness nods head.)

2 Q. You're supposed to mark that to market?

3 A. What? The fractional share?

4 Q. Yeah. Aren't you?

5 A. No. It's a cash transaction.

6 Q. Okay.

7 A. And he doesn't have to. He doesn't have --

8 Q. Wait a second. I'm sorry. You're right,
9 you're right. But you would mark the short sale to
10 market?

11 A. The short position is marked to market,
12 right.

13 Q. Okay. How would you know what the
14 fractional share is six weeks later?

15 A. The fractional share is determined as if,
16 in fact, it was converted. It has nothing to do
17 with -- you're not getting -- actually, you're not
18 getting actually shares. You determine what -- what
19 the fractional share would be entitled to based upon
20 what it was -- what it was sold at the date that it
21 was sold.

22 Q. I guess my question is why would you give
23 them a fractional share on the day you buy the
24 preferred, right, when you may on one?

25 A. You're not getting -- you're not actually

1 getting shares. You're getting --

2 Q. Cash?

3 A. You're getting cash for it.

4 Q. Right.

5 A. Based upon what you would have gotten had
6 you converted it.

7 Q. I mean, you didn't convert it. Why would
8 you give it to them?

9 A. Because if, in fact, we had converted it,
10 the customer would be entitled to it. So, you know,
11 I don't know how to explain it to you.

12 Q. Isn't it also possible that you were
13 backdating that trade and you knew what the
14 fractional share was when you put in the entry for
15 the purchase of the convertible arb?

16 A. No. It's not -- when you say backdating
17 it, they're establishing the price based upon what
18 the stock was selling for at the time that they did
19 the transaction. You know, if, in fact -- if
20 they're giving the fractional share before the stock
21 went to conversion, they have to determine what the
22 price that -- what the price the customer would be
23 entitled to. They're using -- I'm assuming they're
24 using it, the price that they set the transaction up
25 at.

1 Q. Can you tell me why you only had paper
2 customer statements and electronic access?

3 A. When?

4 Q. Forever.

5 A. What do you mean? Like, well --

6 Q. Did your customers ever have electronic
7 access to their accounts?

8 A. No, no.

9 Q. Isn't that because you were backdating?

10 A. First of all, you're talking about this
11 period, '83. There was no electronic access.

12 Q. Well, in 2008 there wasn't either. Doesn't
13 mean you weren't backdating in 1984. What I'm
14 saying is you used paper statements for a reason;
15 didn't you?

16 A. What do you mean paper statements?

17 Q. Because you could -- you could create fake
18 trades over a period of days?

19 A. Wait. What? I'm not sure.

20 Q. It's not that confusing.

21 A. What?

22 Q. It's pretty simple. In other words, you
23 wouldn't give anybody electronic access because you
24 wouldn't control --

25 A. You couldn't get electronic access until

1 certain dates.

2 Q. I understand that.

3 A. Right.

4 Q. But even before that you just continued
5 what you had been doing before, that is, those
6 trades were trades that had already happened and you
7 put them as phony trades into the customer accounts
8 days later, right, and then used other people's
9 money?

10 A. I'm not sure what --

11 MR. GOLDMAN: I'm going to object to this.
12 Ask him a question, don't make a statement. Ask him
13 a question.

14 THE WITNESS: Right.

15 MR. SHEEHAN: You can object all you want
16 and I'm going to ask my question.

17 MR. GOLDMAN: Well, you didn't ask a
18 question. That was the problem.

19 MR. SHEEHAN: No. Peter --

20 MR. GOLDMAN: Yeah.

21 MR. SHEEHAN: -- try to relax. All right.
22 I'm going to ask it the way I want to. The judge
23 can rule on what he's saying.

24 THE WITNESS: Okay.

25 MR. SHEEHAN: All right. I'm asking you a

1 question.

2 THE WITNESS: Uh-huh.

3 Q. (By Mr. Sheehan) All right. Isn't it true
4 that you backdated these trades?

5 MS. CHAITMAN: Objection to form.

6 THE WITNESS: Which trades are you
7 referring to?

8 MR. SHEEHAN: There's no objection to
9 form.

10 THE WITNESS: Which trades are you
11 referring to?

12 Q. (By Mr. Sheehan) You backdated trades? In
13 1984 you were backdating those trades?

14 A. No, no.

15 Q. Those convertible arbs never happened?

16 A. That's not true.

17 Q. All right. And that's why your statements
18 show transactions that couldn't have happened until
19 six weeks later, you're showing them on the day of
20 the trade; isn't that true?

21 A. No.

22 Q. Do you know that there's hundreds of these?
23 This isn't an operational flaw. Do you know that?

24 A. I'm not saying it's an operational flaw.

25 Q. You're saying you did that as a matter of

1 course?

2 A. What I'm telling you is I'm not familiar
3 with what their procedure was with fractional shares
4 of how many --

5 Q. You ran the company. You didn't know?

6 A. I don't know. I'm not part of the
7 operations department.

8 Q. Didn't you tell us that nobody dealt with
9 customers those years except you?

10 A. Nobody did what?

11 Q. Nobody dealt with the customers except you
12 in those years, '80s?

13 A. I dealt with the customers when we --
14 when -- I spoke to the customers. I didn't
15 physically handle the bookkeeping transaction for
16 the customers ever.

17 Q. You wouldn't look at the customer
18 statements?

19 A. The customer statements after -- no. I
20 mean, I looked at customer statements after they
21 were generated.

22 Q. But would you talk to the customer about
23 them?

24 A. I first for the most part never spoke to
25 the customers.

1 Q. Uh-huh.

2 A. I mean, very -- you know, customers would
3 never call me up and ask me to, you know, discuss
4 their statement with them because I -- you know, I
5 never looked at their customer statements. The
6 statements were generated by the operations
7 department. It was not something that I would --
8 that I would discuss with the customer, you know,
9 nor did I -- nor did I generate anything.

10 Q. Right, okay. Let's move on.

11 A. Okay.

12 Q. Let me show you -- what is it? Four?

13 MS. FEIN: Four.

14 (Trustee's Exhibit Number 4 was marked for
15 identification.)

16 Q. (By Mr. Sheehan) Exhibit 4. Before I get
17 it wrong, I think it -- how many pages is it? Four?

18 MS. FEIN: We'll just do the two, two
19 pages.

20 MR. SHEEHAN: Okay. All right. Fine.
21 But they're front and back.

22 MS. FEIN: Yeah. And your copy there, and
23 it's the first two. I can take the rest out.

24 MR. GOLDMAN: What do you want us to hold?

25 MR. SHEEHAN: Just the first two are the

1 ones we're doing.

2 MR. GOLDMAN: Do you want the others back?

3 MR. SHEEHAN: No, no. Keep everything.

4 You can keep everything. We don't want anything
5 back. Before we talk about these, you can look at
6 them, Mr. Madoff. I don't mean to interrupt you.

7 THE WITNESS: Uh-huh.

8 Q. (By Mr. Sheehan) Do you remember you were
9 -- you showed us Mr. Blecker's at your deposition --
10 I'm sorry. Let me rephrase that. Back on
11 December 20th you showed us Mr. Blecker's 2005
12 statement. Do you remember that?

13 A. Uh-huh.

14 Q. And on the back of it it had language with
15 regards to average pricing. Do you remember that
16 testimony?

17 A. I'm not sure I understand your question
18 again.

19 Q. Well, in other words, on the back of Mr.
20 Blecker's 9-2005 statement there was language from
21 your company that said that you would -- you could
22 engage in average pricing with regard to the
23 transactions?

24 A. On the Blecker statement I never saw the --
25 what the language was.

1 MR. SHEEHAN: Okay. Then let's show it to
2 you. What's that? So here we go, Peter. I'm
3 sorry.

4 MR. GOLDMAN: That's all right.

5 MR. SHEEHAN: You've already got those
6 two.

7 Q. (By Mr. Sheehan) All right. So we've now
8 handed you what was marked as Exhibit Number 8 on
9 December 20th, 2016. Bless you. And I refer you to
10 the second page. And it's the second paragraph and
11 I believe it is the second sentence starting with
12 the word unless. Do you see that?

13 A. What are we looking at? The Blecker
14 statement?

15 MR. SHEEHAN: Yes.

16 MR. GOLDMAN: I think it's mixed up.
17 Which one is the Blecker statement?

18 MS. CHAITMAN: It doesn't appear to be the
19 Blecker statement.

20 Q. (By Mr. Sheehan) Okay. If you're
21 looking -- you should be looking at this that's got
22 a redaction on the front of it.

23 A. Okay.

24 Q. And it has an exhibit sticker on it. You
25 see that --

1 A. Uh-huh.

2 Q. -- over here? Yeah.

3 A. Yeah.

4 Q. Okay. So if you turn to the second page of
5 that, Mr. Madoff --

6 A. Uh-huh.

7 Q. -- you'll see that this was actually on the
8 back of that.

9 A. Okay. I got it, yeah.

10 Q. Okay. And if you look at that and you go
11 to this second paragraph where it starts off
12 customer equity transaction --

13 A. Correct.

14 Q. -- do you see that? Okay. It says on the
15 second sentence, and I'll just read it into the
16 record, quote, unless stated otherwise on the front
17 of this confirmation, comma, the trade price of your
18 transaction is an average price and includes a
19 commission equivalent of .4 cents per share, period.

20 A. Right.

21 Q. Do you see that?

22 A. Uh-huh.

23 Q. Okay. That's what I was referring to.

24 A. Oh, okay.

25 Q. Do you remember testifying to that back on

1 December 20th?

2 A. Right.

3 Q. Okay. So with that background I wanted to
4 direct your attention to what has now been marked as
5 Exhibit 4, which I believe is right in front of you.

6 A. Uh-huh.

7 Q. Take a look at those statements and tell me
8 if there's any language on those that talks about
9 average pricing; all right? Not that one, the two
10 in front of you.

11 A. Oh, oh.

12 Q. Yeah. Just go to the --

13 A. Okay. I see it.

14 Q. See that?

15 A. Uh-huh.

16 Q. All right.

17 A. There is no average. There's no -- there
18 is no language about average price nor is there
19 language of what the commission equivalent is
20 because that language was changed based upon rules
21 that the industry has stated you now had to -- you
22 now had to put that language on the confirmation.

23 Q. Were you, in fact, doing average pricing in
24 -- in front of you is a good one. August 7, '84,
25 which is the date on Exhibit 4.

1 A. I'm assuming that it was an average price.
2 Again, it depends upon how many -- how many shares
3 we were buying and selling at that -- it could have
4 been average price. It could not have been average
5 price.

6 Q. Did you advise your customers other than --
7 yeah. Did you -- I mean, did you advise your
8 customers in 1984 that you were using average
9 pricing?

10 A. If, in fact, we were using an average
11 price, no. You know, we wouldn't necessarily
12 because it wasn't required to -- they changed the
13 language. The SEC changed the language that had to
14 be on confirmations regarding, you know, average
15 price or commission equivalent and so on. In other
16 words, they changed the language that you had to do
17 it.

18 So there are -- if there was no language
19 about average price on there, it wasn't required to
20 put on there. The same thing that they changed the
21 language about putting whether a commission
22 equivalent. They never used to have -- use the term
23 commission equivalent for a mark-up.

24 They would just -- in other words, they
25 allowed you to put language on the -- they told you

1 to put language on the confirmation that said you
2 were not charging a commission or not charging a
3 mark-up, which you aren't charging a commission
4 equivalent, which was a mark-up.

5 Q. Okay.

6 A. They just changed the requirements. That's
7 why there's no language that -- you know, on the
8 earlier transaction. Was no requirement I should
9 say.

10 MR. SHEEHAN: Okay. Thanks. Are we --
11 okay. Whoops. It's knocking over. Got too many
12 statements.

13 MS. FEIN: Yes.

14 MR. GOLDMAN: Too small a desk.

15 MR. SHEEHAN: That's for sure.

16 (Trustee's Exhibit Number 5 was marked for
17 identification.)

18 Q. (By Mr. Sheehan) Okay. Now, Ms. Fein is
19 now handing you exhibit -- what's been marked
20 exhibit -- Trustee's Exhibit 5. Take your time,
21 take a look at that.

22 A. Uh-huh.

23 MS. FEIN: I'm sorry.

24 MR. GOLDMAN: That's all right. No one is
25 going anywhere.

1 THE WITNESS: Okay.

2 Q. (By Mr. Sheehan) Just starting right on
3 the first page of that, see in the upper left-hand
4 it says originator number? Do you see that?

5 A. Right.

6 Q. And it says 0646?

7 A. Uh-huh.

8 Q. What does that represent, if you know?

9 A. That's our clearinghouse number.

10 Q. And you previously answered that's the only
11 number you've had?

12 A. Yes.

13 Q. Okay, okay. Just this is more for
14 informational purposes. Where is that? It's here
15 somewhere. Oh, there it is.

16 MS. FEIN: Yes.

17 Q. (By Mr. Sheehan) Again, recalling your
18 earlier testimony, Mr. Madoff, do you remember at
19 one point suggesting that a convertible security
20 could be flat?

21 A. Could be flat?

22 Q. Flat.

23 A. No.

24 Q. Meaning that -- well --

25 A. Oh, trading without interest you're talking

1 about?

2 Q. Thank you.

3 A. Right.

4 Q. All right. That's what I meant.

5 A. Uh-huh.

6 Q. Take a look at page -- we are trying to --

7 MS. FEIN: It ends in 651. It's the

8 second to last page, I think.

9 Q. (By Mr. Sheehan) Yeah. It's the second to
10 last page. It looks like this right here. Do you
11 see that? It's a Trans World Airlines. What does
12 that entry mean to you?

13 A. Trans World Airlines subordinated
14 convertible directions. Is that what you're looking
15 at?

16 Q. Yes.

17 A. What's your question? What does it mean to
18 me?

19 Q. Yeah. Well, look below that and it says
20 interest. Do you see that?

21 A. Uh-huh.

22 Q. Just an entry. Does this mean that this
23 was not a flat trade?

24 A. I assuming it's accrued interest. Bonds
25 trade, you know, that's -- you know, that's the

1 interest that the bond had paid and you have to
2 credit the customer with that.

3 MR. SHEEHAN: Okay. That's all I had.

4 THE WITNESS: Uh-huh.

5 MR. SHEEHAN: What? What more do you
6 want.

7 (Discussion off the record.)

8 Q. (By Mr. Sheehan) Not going back there.
9 I've done enough on fractional shares.

10 A. Fractional shares.

11 Q. I don't think anybody could handle another
12 fractional share.

13 A. Right.

14 Q. Slowly I turn. Anyhow, all right. We made
15 progress on that break, eliminated a lot here. So
16 let's turn to a different topic, margin accounts.
17 We've been talking about those, but could you tell
18 me your understanding of what a margin account
19 means?

20 A. What is a margin account?

21 Q. What is a margin account?

22 A. A margin account is if a customer is
23 buying -- you know, is borrowing money from the
24 brokerage firm to buy stock. So he has a margin
25 account, you know. If, in fact, the customer wants

1 to buy a thousand dollars worth of stock and only
2 has \$500, he'd borrow the other \$500 from the
3 brokerage firm.

4 Q. Okay.

5 A. That's one type of margin. Then there's
6 the type of margin if the customer wants to -- wants
7 to -- is pledging with the brokerage firm securities
8 to cover his -- his short exposure on the stock.

9 Q. Are there government regulations with
10 regard to margin accounts?

11 A. Based upon how much -- how many -- how much
12 credit you can give the customer based upon let's
13 say 50 percent margin.

14 Q. Okay. Does the term regulation T mean
15 anything to you?

16 A. Regulation T means what -- typically what a
17 customer has to pay for the stock within a certain
18 amount of days after he buys it.

19 Q. Buys it on margin?

20 A. Hmm?

21 Q. Buys it on margin?

22 A. Whether margin or cash, doesn't matter.

23 Q. Okay.

24 A. When a customer has to pay for the stock
25 that he bought, how many days.

1 Q. The 50 percent margin you talked about a
2 moment ago, does that derive from reg T?

3 A. Does it what?

4 Q. Derive from regulation T?

5 A. I'm not sure. You know --

6 (Trustee's Exhibit Number 6 was marked for
7 identification.)

8 Q. (By Mr. Sheehan) Okay. That's fine. I'm
9 going to show you a series of customer statements.

10 A. Uh-huh.

11 Q. We've redacted the name of the individual
12 because it's one of the big four.

13 A. Uh-huh.

14 Q. Doesn't matter who his name is. I just
15 want to ask you about the entries on it with regard
16 to the margins; okay? And it is marked as
17 Exhibit 6. Is that all of the pages?

18 MS. FEIN: Uh-huh.

19 MR. SHEEHAN: Okay.

20 THE WITNESS: Is this for a '93
21 transaction?

22 MR. SHEEHAN: It's actually an '83.

23 THE WITNESS: '83, yeah. I see.

24 Q. (By Mr. Sheehan) If you turn the page, the
25 copies are better, but these are all in 1983; all

1 right?

2 A. Oh, okay. Uh-huh.

3 Q. Pardon?

4 A. Yeah.

5 Q. And '80 -- it actually ends, I think the
6 last one is --

7 A. Some are '93, some are '83.

8 MR. GOLDMAN: Going to have to get halfway
9 before you get to '84.

10 THE WITNESS: The top page is '83 and then
11 it's '93 and then there's '83.

12 Q. (By Mr. Sheehan) I think the '90s are
13 where the account gets closed out, but I think this
14 is the history of the account from the beginning to
15 the end; right?

16 A. Uh-huh.

17 Q. So take a moment to look and I'm going to
18 be asking you principally about the margins here --

19 A. Right.

20 Q. -- but some other questions as well.

21 A. Uh-huh.

22 Q. So just to get us grounded, let's look at
23 the first page of this exhibit. And just so we all
24 know about what that first page is, it is the Bates
25 number ends in it's MF 248. And directing your

1 attention to the August 23 entry, what do you see
2 that to be?

3 A. A check you mean?

4 Q. Yes.

5 A. Looks like the customer sent in a check for
6 \$1,500,000.

7 Q. Okay. And then what's the next entry?

8 A. The purchase of American Telephone.

9 Q. Yes.

10 A. Uh-huh.

11 Q. Just short of a million five; right?

12 A. Right, uh-huh.

13 Q. And that's the end position as well?

14 A. Right.

15 Q. Okay. So then turning to the next month,
16 next month is -- we were in August. Now we're in
17 September of '83?

18 A. Uh-huh.

19 MS. CHAITMAN: I just want to say this
20 looks like it's 8-31-93. You're saying you're sure
21 it's 8-31-83?

22 MR. SHEEHAN: Yes. It is.

23 MS. FEIN: And you can tell based on the
24 statements following it as well, but it's true that
25 the first page is less clear.

1 MS. CHAITMAN: Because the Bates number
2 isn't consecutive.

3 MS. FEIN: No. They're not. They're not
4 kept that way every time, so --

5 MR. SHEEHAN: I haven't misrepresented
6 anything in a week, so pretty safe that this is '83.
7 All right?

8 MS. CHAITMAN: Okay. I was just --

9 Q. (By Mr. Sheehan) All right. So next page
10 is September 30, '83. And we see there what's the
11 first entry there on September 29th?

12 A. Check for \$250,000 debit, needs to be sent
13 a check for \$250,000.

14 Q. Did any other transaction take place that
15 month?

16 A. Doesn't look like it.

17 Q. And did you charge him interest for that?

18 A. Seems to be an interest, yeah, \$154.

19 Q. Okay.

20 A. It says margin interest.

21 Q. Thank you. Okay. Now, let's go to the
22 next one, which is October 31, '83.

23 A. Uh-huh.

24 Q. And you're charging interest again on the
25 250; are you not?

1 A. Right.

2 Q. Okay. Let's go to the -- actually, we can
3 skip a page or two. These are all consecutive
4 months. We're now in December 30th, '83. Do you
5 see that up in the upper left-hand corner, December
6 '83?

7 MS. FEIN: Bates ending in 301.

8 MR. SHEEHAN: Yeah. It's one, two, three,
9 four, five. It's the sixth page in.

10 THE WITNESS: Okay, right.

11 Q. (By Mr. Sheehan) And there's several
12 entries there?

13 A. Uh-huh.

14 Q. Is there another check issued to this
15 customer?

16 A. Uh-huh.

17 Q. How much?

18 A. Capital -- it says CW, \$250,000.

19 Q. Yes.

20 A. Right.

21 Q. What does CW stand for?

22 A. Capital withdrawal.

23 Q. Now, with respect to these two borrowings
24 against the margin account, has any stock been
25 purchased with that money?

1 A. I don't know. I'll have to look at the
2 account. Are there transactions here?

3 Q. Yes, because at the very beginning the
4 first one we looked at --

5 A. Uh-huh.

6 Q. -- the customer deposited a million five
7 and then you -- and then the next or actually before
8 that, I guess that was the payment for it, but
9 before that on 8-19 you had purchased looks like 645
10 shares of AT&T for an aggregate price of 1,499,840.
11 Do you see that on the first page?

12 A. Uh-huh, uh-huh.

13 Q. All right. And then but then there are two
14 borrowings against the margin account aggregating
15 \$500,000 but no apparent stock being purchased. Do
16 you see that?

17 A. Okay. So --

18 Q. All right. I'm just saying that you agree
19 that that's what's there?

20 A. Not -- I can't say I agree with it. I'm
21 not sure what the question is.

22 Q. Well, my question was was any of that
23 \$500,000 used -- the statement seems to suggest that
24 the million five that was deposited was used to
25 purchase the stock; correct?

1 A. Right.

2 Q. And, therefore, and then after that
3 \$500,000 was borrowed but not used to purchase any
4 stock. So in effect it was borrowed against the
5 existing position?

6 A. Okay.

7 Q. All right?

8 A. Uh-huh.

9 Q. That's what it appears?

10 A. Okay.

11 Q. All right, fine. So we then go through and
12 we pick up in January of '84, which we can pass
13 over. Then we have February of '84. And you're
14 going to see something that you actually referred to
15 yesterday?

16 MS. FEIN: Yeah, on page eight.

17 MR. SHEEHAN: Page eight.

18 MS. FEIN: Ending in 461 for the Bates.

19 MR. SHEEHAN: It's got a lot of entries.

20 THE WITNESS: Page eight. I don't --

21 MS. FEIN: 461 and it's February '84.

22 THE WITNESS: Okay.

23 Q. (By Mr. Sheehan) So do you see all those
24 entries there?

25 A. Uh-huh.

1 Q. Do they mean anything to you? What I mean
2 by that, what was happening?

3 A. This is showing what it was long -- what he
4 was long in the account.

5 Q. Doesn't this reflect the break-up of AT&T?

6 A. I have no idea. I don't -- you know.

7 Q. Because originally you had a large
8 position, about a million five, in AT&T?

9 A. Uh-huh.

10 Q. And it appears that now it's been broken up
11 into different entities?

12 A. Right. This was when they were -- this was
13 when they broke up the AT&T into the baby Bells, I'm
14 assuming.

15 Q. Right.

16 A. Right.

17 Q. Okay. And then if you carry it over to the
18 next page --

19 A. Uh-huh.

20 Q. All right. Which is the second page of the
21 2-29 statement, you see the end positions; all
22 right?

23 A. Uh-huh.

24 Q. Okay. Then go to the March 31st, which is
25 the next one.

1 A. Uh-huh.

2 Q. And what you see there is what on 3-13?

3 A. Margin interest you're talking about?

4 Q. It's actually above that, the IBM

5 purchase --

6 A. Okay.

7 Q. -- or short, actually.

8 A. Right.

9 Q. No, no. It was a purchase?

10 A. No. It's purchase.

11 Q. It's purchase.

12 A. Uh-huh.

13 Q. Yep.

14 A. Right.

15 Q. And then below that margin interest again
16 being charged?

17 A. Uh-huh.

18 Q. So take a look at the end positions here.

19 A. Uh-huh.

20 Q. How much is the debit at that point?

21 A. You're talking about the 2 million?

22 Q. Two million one hundred and ten thousand,
23 yeah.

24 A. Right, uh-huh.

25 Q. Is that the amount that -- is that the

1 amount owed to you?

2 A. Two million one ten?

3 Q. Yeah.

4 A. That looks like it's the value of the -- of
5 the positions that are above it.

6 Q. Okay. All right. What does the million
7 seventy-one thousand represent?

8 A. It must be the value of the short
9 positions.

10 Q. Okay, okay. Let's look at April 30, '84.

11 A. Uh-huh.

12 Q. We've got you here charging margin
13 interest?

14 A. Uh-huh.

15 Q. And there's another check issue, is there
16 not, for 250?

17 A. Uh-huh.

18 MR. SHEEHAN: One second, please.

19 (Discussion off the record.)

20 Q. (By Mr. Sheehan) So let's go down to the
21 end positions again --

22 A. Uh-huh.

23 Q. -- on this one. It's April 30. Let me see
24 this. So the long positions are two million one
25 ten?

1 A. Right.

2 Q. And when he said the column isn't short its
3 difference, isn't the one million three thirty-six
4 what is actually owed to you?

5 A. No. That would be the value of the short
6 positions, mark to market on the short positions.

7 Q. Where are you accounting for the margin
8 count here?

9 A. What do you mean where am I?

10 Q. Well, in other words, he's continuing to
11 borrow money?

12 A. Right.

13 Q. Where do you show that on the statement?

14 A. You're talking about the margin interest?

15 Q. No. I'm talking about the margin, the
16 amount he borrowed, the 250, the other 250s, et
17 cetera. Where is that on the statement?

18 A. It's the statement is being debited.

19 Q. That's what I'm saying. Isn't the amount
20 he borrowed, the 1,000,000 -- see it here, new
21 balance?

22 A. Uh-huh.

23 Q. Let's go back up. Maybe it's easier this
24 way. See the check and then the amount?

25 A. For \$250,000?

1 Q. Yeah.

2 A. Right.

3 Q. See, let's start at the very, very top. It
4 says debit; right?

5 A. Uh-huh.

6 Q. Balance forward, a million seventy-one. He
7 borrows another 250, the interest, and that all adds
8 up to 1,336,234?

9 A. That's his new balance, right.

10 Q. Right. And that's the margin count, is it
11 not, that he's borrowed?

12 A. That's the total debit.

13 Q. Yep.

14 A. Uh-huh.

15 Q. Okay. So let's just keep moving along
16 and --

17 MR. GOLDMAN: You sort of lost me. Can I
18 ask him?

19 MR. SHEEHAN: Yeah, sure.

20 MR. GOLDMAN: If you look at the opening
21 balance on the 4-30 statement, it says opening
22 balance of a million seventy-one balance forward.

23 MR. SHEEHAN: Right.

24 MR. GOLDMAN: Where does that -- is that
25 reflected in the 3-31 closing? Oh, I see it. Okay.

1 Now I see it.

2 MR. SHEEHAN: You got it?

3 THE WITNESS: Yeah, okay.

4 Q. (By Mr. Sheehan) So let's jump forward to
5 July 31, 1984. It's Bates number 84. Do you see
6 it, Mr. Madoff?

7 MS. CHAITMAN: May be that next one.

8 Q. (By Mr. Sheehan) 7-31-84. Okay. Again,
9 let's start with the debit. And you can see the
10 carry forward of the million three twenty-nine?

11 A. Uh-huh.

12 Q. Which has gone up a little bit because of
13 interest. Now there's another borrowing of 250,
14 interest charged. Now the total borrowings are one
15 million five ninety-eight. Do you see that?

16 A. Right. That's his debit balance.

17 Q. Now, at this point that borrowing is more
18 than 50 percent. Remember you mentioned 50 percent
19 earlier?

20 A. Uh-huh.

21 Q. Now it's more than 50 percent of the value
22 of the stock he holds.

23 A. Uh-huh.

24 Q. What are you supposed to do?

25 A. Well, first of all, these accounts are

1 probably cross -- if these are the big four
2 accounts, they were cross-margined, so you'd have to
3 look at all of his accounts. Here they'd
4 cross-margin accounts, which means he's borrowing --
5 you know, you'd have to compile all of his accounts,
6 his family accounts, because they -- they're handled
7 as a joint account.

8 Q. There were a lot of accounts. I didn't
9 bring them all here.

10 A. Yeah.

11 Q. Just for purposes of our discussion, assume
12 the cross-margin would be more than 50 percent.
13 What should you do at that point?

14 MS. CHAITMAN: Objection to form.

15 THE WITNESS: I'm confused as to what the
16 question is.

17 Q. (By Mr. Sheehan) Well, let me put it a
18 different way. If the debit balance exceeds
19 50 percent, isn't a broker at that point supposed to
20 call upon the customer to deposit more cash?

21 A. Typically you would call them for
22 additional cash, yeah.

23 Q. Right, okay.

24 A. And, again, it depends upon -- the
25 50 percent margin depends upon whether or not he

1 has -- the account is hedged and he has -- you'd
2 have to look at -- you can't just look at one
3 account. You have to look at of all the accounts.
4 They'd have to look at the type of positions he has
5 and whether there were -- there were arbitrage
6 positions set up upon it. You can't just look at
7 one isolated account.

8 Q. Okay. So now let's go to October 31, 1984.
9 If we could -- yeah, October.

10 MS. CHAITMAN: Okay.

11 THE WITNESS: Uh-huh.

12 Q. (By Mr. Sheehan) Do you see starting again
13 with debit, it's now a million five ninety-eight?
14 Customer borrows other 450. There's an interest
15 charge of \$22,000. The entire debit is now over two
16 million dollars. Do you see that?

17 A. Uh-huh.

18 Q. Which is almost 100 percent of that
19 balance?

20 A. Uh-huh.

21 Q. So your testimony is that you would have to
22 look at the cross-margin here?

23 A. Yeah. You have to look at, you know -- at
24 -- if, for example, if he has -- you know, you can't
25 just look at this account. He may be overmargined

1 in this account, but if he has other securities in
2 another account, you know, you'd have to, you know,
3 equate that to that as well.

4 Q. All right. So let's go to 12-31-84.
5 Again, on the debit side what we see is two million
6 fifty-nine; right?

7 A. Uh-huh.

8 Q. Another \$750,000 is borrowed, interest is
9 charged, and there's now a new balance of two
10 million eight twenty-five. Do you see that?

11 A. Okay. I'm assuming that you're correct.
12 I'm not following it, but go ahead.

13 Q. Okay. It's -- well, why don't we get you
14 to the right page?

15 MS. CHAITMAN: Hold on, hold on.

16 THE WITNESS: I'm assuming that the
17 statements are correct.

18 Q. (By Mr. Sheehan) All right, fine. I'm not
19 actually testing that. I just wanted to ask you a
20 few questions and, unfortunately, sometimes you have
21 to lay a foundation. So here you go.

22 A. Okay.

23 Q. So if you look at the end positions here,
24 now the stock position is two million one ten. And
25 you've got a margin that far exceeds that at two

1 million eight twenty-five. Do you see that?

2 A. Uh-huh.

3 Q. Are you saying that even with a pre --
4 because of cross-margin, you would allow this kind
5 of borrowing to take place against two million
6 dollars?

7 A. I'm assuming -- again, saying this is not
8 my area, but I'm assuming that if, in fact, you
9 know, that he had enough -- enough equity in the
10 account to cover whatever he was borrowing.

11 Q. Right.

12 A. But you'd have to look at, you know, all of
13 the accounts of the family if, in fact -- you know,
14 because that's how they were cross-margined. So you
15 can't look at one account. You'd have to -- you
16 know, so for me to look at this would be meaningless
17 to me. You'd have to take a picture of all of -- of
18 all the accounts that he had.

19 We generally would not -- would not be
20 lending the -- buying more securities than the
21 customer had enough equity to cover his marginal
22 requirements.

23 Q. Right.

24 A. But he had other accounts that he just had
25 -- he could have had just long positions in there

1 that, you know, there were no borrowing against, but
2 that's the purpose of a cross-margin agreement.

3 Q. Right. Let's go to 13185, which I think is
4 the next page if you would. See it up in the
5 left-hand corner? I think it's 13185.

6 MS. CHAITMAN: It's the next page, yes.

7 THE WITNESS: Okay.

8 Q. (By Mr. Sheehan) See the balance carried
9 forward of two million eight twenty-five is a debit?

10 A. Right.

11 Q. Again, a January margin interest payment --
12 charge?

13 A. Uh-huh.

14 Q. But the new balance is two three
15 forty-nine?

16 A. Uh-huh.

17 Q. Could you look down the statement --

18 A. Uh-huh.

19 Q. -- and can you see what transpired this
20 month that caused a reduction in the debit?

21 A. Right.

22 Q. What is it?

23 A. You're talking about what the market value
24 of the positions he has, the two million one ten?

25 Q. Yes.

1 A. Okay.

2 Q. So how does the debit go from two eight two
3 five to two three four nine; right?

4 A. Which was that went down because of the --
5 well, first of all, there was a short. There was a
6 sale and then there was also margin interest. I'm
7 assuming the -- I'm assuming the debits and credits
8 were correct because that's generated by the
9 computer, so --

10 Q. But the end position seems to be the same,
11 two million one ten?

12 A. Yes.

13 Q. Yet there's been a reduction?

14 A. There's been a market value of those listed
15 positions.

16 Q. Right. But how did we go down to two three
17 four nine? Do you see an entry that would explain
18 that?

19 A. That's the value of the short position.

20 Q. Okay. Well, I think we've salvaged as to
21 debit. Let me take you up to the top here. Do you
22 see where -- we had debit. Now look at credit. Do
23 you see that?

24 A. The what?

25 Q. There's a credit there of \$500,000. Do you

1 see it?

2 A. Yes. That means that --

3 Q. Does that represent payment by the
4 customer?

5 A. Yes. It means caption addition. It means
6 a check --

7 Q. That would reduce the --

8 A. A check must have come in, right.

9 MR. SHEEHAN: All right. Thanks.

10 MR. GOLDMAN: That was an easy one.

11 MR. SHEEHAN: Yeah. Let's see. I got it.

12 MR. GOLDMAN: Wait a minute. I have a
13 question for you, though.

14 MR. SHEEHAN: Yeah, sure.

15 MR. GOLDMAN: The document starts off up
16 where it says redacted --

17 MR. SHEEHAN: Right.

18 MR. GOLDMAN: -- and it says right next to
19 it, it might new be an internal control from the
20 Trustee, but it says 9525.

21 MS. FEIN: Which page are you on?

22 MR. SHEEHAN: The Social Security number,
23 we always redact part of that.

24 MR. GOLDMAN: The 9525?

25 MR. SHEEHAN: Yeah. I'm pretty sure

1 that's what that is.

2 MR. GOLDMAN: But if you go ahead a couple
3 of pages, it changes.

4 MR. SHEEHAN: Oh, yeah?

5 MR. GOLDMAN: Go to --

6 MR. SHEEHAN: Maybe I'm wrong then. I
7 don't really know, but --

8 MR. GOLDMAN: Go to December and it
9 becomes 5965.

10 MR. SHEEHAN: Yeah. I see that. Yeah. I
11 see that.

12 MR. GOLDMAN: Yeah.

13 MR. SHEEHAN: Okay.

14 MR. GOLDMAN: But is the account number
15 the number at the very top?

16 MR. SHEEHAN: Yes. The account number
17 never changes.

18 MR. GOLDMAN: Yeah. Well, that was the
19 inconsistency I saw, so I didn't know why.

20 MR. SHEEHAN: Okay. Well, that's worth
21 noting and we'll certainly look into it, but these
22 are all from the same account.

23 MR. GOLDMAN: Okay.

24 MR. SHEEHAN: So --

25 THE WITNESS: Cold again.

1 MR. GOLDMAN: Are you cold?

2 MR. SHEEHAN: No, no. I want to ask him a
3 couple of questions.

4 MS. FEIN: Yeah, okay.

5 Q. (By Mr. Sheehan) Now, Mr. Madoff, in 1984
6 did you file focus reports?

7 A. We always filed focus reports, yes.

8 Q. Okay. And I believe your testimony was,
9 and correct me if I'm wrong, prior to 1992 your
10 focus reports were always accurate?

11 A. No.

12 Q. No. So correct me. What was -- what was
13 not accurate prior to 1992?

14 A. The -- when the --

15 Q. Let me restate the question. I may have
16 gone too fast.

17 A. Yeah.

18 Q. Okay. And we can look it up, but I'm
19 pretty sure your testimony was that prior to 1992
20 all of your focus reports were accurate. Is that
21 true?

22 A. Okay.

23 Q. Is that true?

24 A. No.

25 Q. And what about your focus reports prior to

1 1992 would not have been true?

2 A. The customer debit -- the customer debit
3 balances and credit balances.

4 Q. I'm sorry. Why was that?

5 A. Because we weren't reflecting the -- the
6 customer margin accounts.

7 Q. Okay. Why weren't you reflecting the
8 customer margin accounts?

9 A. Because we weren't. It wasn't correct. I
10 said the fraud started -- when I refer to the fraud
11 starting in '92 --

12 Q. Right.

13 A. -- I was referring to the -- to the split
14 strike conversion trades.

15 Q. Right.

16 A. Uh-huh.

17 Q. Okay. But why were you not accurately
18 reporting the margin account activity prior to 1992?

19 A. Because I wasn't.

20 Q. Was there a reason why you didn't do it?

21 A. We didn't want to show the -- the debit
22 balances. Well, first of all, I'm not 100 percent
23 sure because you were allowed to net the -- the
24 debit and credit balances from all of the customer
25 accounts. Depends upon what the short position is,

1 so I can't really answer you that, that question.

2 Q. Okay. Well, let's take a look at the focus
3 report; okay?

4 A. Uh-huh.

5 Q. I think we have them from the year '84?
6 '84.

7 MS. FEIN: It will be seven?

8 MR. SHEEHAN: Seven.

9 (Trustee's Exhibit Number 7 was marked for
10 identification.)

11 MR. SHEEHAN: You marked that up for me.
12 Yeah. I guess I should. All right. Thank you.

13 MS. FEIN: Always.

14 MR. SHEEHAN: Yes.

15 Q. (By Mr. Sheehan) All right. You've been
16 handed Exhibit 7?

17 MS. FEIN: Uh-huh.

18 Q. (By Mr. Sheehan) Exhibit 7, which is the
19 focus reports which we compiled that are the four
20 quarterly reports for 1984.

21 A. Uh-huh.

22 Q. And I believe the one at the beginning, I
23 think they're in reverse order, this is the one at
24 the beginning. The dates on it if you look at it
25 says for the period beginning 10-1-84 to 12-31-84.

1 Do you see that? So just sticking with that first
2 quarterly report, if you would, turn to -- see, take
3 a look at the page 2 of 29. It's actually -- just
4 turn the page.

5 A. Right.

6 Q. Down at the very bottom it says number
7 four, receivables from customers?

8 A. Uh-huh.

9 Q. What is your understanding of what that
10 would be?

11 A. It would be what the customers owe us.

12 Q. Okay. And then underneath it says
13 securities accounts, one, cash and fully secured
14 accounts. Do you see that?

15 A. Uh-huh.

16 Q. What do you understand that to be?

17 A. What it says.

18 Q. Okay. And do you see what the entry is for
19 that?

20 A. Uh-huh.

21 Q. Zero?

22 A. Uh-huh.

23 Q. Is that correct?

24 A. I don't know. I mean, again, I'd have to
25 see. I'd have to see what the total debits and

1 credits were of all the customer accounts and how
2 they were netted out.

3 Q. So it's your understanding it's a
4 compilation of all of the margin accounts that you
5 had?

6 A. Right, based upon what the net and short
7 positions were of the customer.

8 Q. Okay. So it could all net out to zero?

9 A. That I can't tell you because that's not
10 something that I --

11 Q. All right, all right. Let's go to page
12 ten. All right. And it's page 10 of 29 and it's
13 three up from the bottom. It's number five. Do you
14 see that?

15 A. Uh-huh.

16 Q. It says margin interest. Are you there
17 with me?

18 A. Right.

19 Q. And what is the entry for that?

20 A. Zero.

21 Q. That's not true; is it?

22 A. Oh, I -- wait a minute. Which item are you
23 talking about?

24 Q. Talking under revenue, it says number five,
25 margin interest, and the entry is zero?

1 A. Right. That's what I just said, right.

2 Q. And we just looked at one account where the
3 margin interest was substantial?

4 A. Uh-huh.

5 Q. So that entry is incorrect; right?

6 A. Again, I don't know how they calculate
7 that. It's not something that I did.

8 Q. All right. If we go through all of these,
9 I represent to you that they all are zero --

10 A. Right.

11 Q. -- for both of those entries that we just
12 reviewed.

13 A. Uh-huh.

14 Q. Okay. And is your answer is you just don't
15 know why it's zero?

16 A. I don't fill out this report, so I don't
17 know.

18 Q. Do you ever remember instructing people to
19 not enter the margin interest?

20 A. That's -- no. I don't remember that.

21 Q. Did they ever actually pay you the margin
22 interest?

23 A. If the money came out of the account, they
24 must have.

25 Q. So what do you mean by that? Maybe I'm not

1 understanding you.

2 A. I mean, if the margin interest came out of
3 the account, you know, it would have been deducted
4 from the monies they sent in.

5 So, I mean, if there are entries in the
6 account, you know, margin interest and there were
7 checks coming into the account, obviously, it would
8 have been -- it would have reduced, you know, would
9 have reduced the balance in their account. If
10 somebody sent me in \$500,000 and we charged them
11 interest of \$100,000 --

12 Q. Got it.

13 A. -- their balance would have gone down by
14 100 -- you know, by the \$100,000.

15 Q. So who would have filled out this report,
16 the focus report, that is?

17 A. During what year? Is this in the '80s?

18 Q. Yeah.

19 A. It would have been filled out by Sylvia
20 Hendel --

21 Q. Okay.

22 A. -- or Irwin Lipkin. Either one of them.

23 Q. All right. Give me a moment. If we go
24 back to Exhibit 6 --

25 MS. FEIN: Okay.

1 (Discussion off the record.)

2 MR. SHEEHAN: You're going to have to give
3 me '84.

4 MS. FEIN: Okay.

5 MR. SHEEHAN: Okay.

6 MS. CHAITMAN: You're looking at 12-31-84?

7 MR. SHEEHAN: Yeah.

8 MS. CHAITMAN: From Exhibit 6?

9 MR. SHEEHAN: Yeah.

10 Q. (By Mr. Sheehan) So looking back at
11 Exhibit 6, looking at December 31st, 1984 --

12 MS. CHAITMAN: I'm just getting that.

13 MR. SHEEHAN: Okay, sure. Maybe you can
14 help Mr. Madoff.

15 MS. CHAITMAN: I am.

16 THE WITNESS: Uh-huh, okay.

17 Q. (By Mr. Sheehan) So the ending balance of
18 that end of year was two million eighty twenty-five.
19 Do you see that?

20 A. Right, uh-huh.

21 Q. And there does not appear to be any
22 payments made that year in the 12 months preceding
23 it?

24 A. Right.

25 Q. So wouldn't there have been interest at the

1 end of '84 that should have been reported for this
2 account?

3 A. You'd have -- you'd have to look at all of
4 the accounts. You know, they're netted, so I
5 can't -- you don't treat just one account. You'd
6 have to look at the other accounts. He may have had
7 an offsetting balance in those other accounts and
8 they're netted.

9 (Discussion off the record.)

10 MR. SHEEHAN: Okay. That's fine. Hang on
11 one second. Just hang onto it.

12 MS. FEIN: Uh-huh.

13 Q. (By Mr. Sheehan) New topic. Maurice
14 Cohn --

15 A. Uh-huh.

16 Q. -- who is he or who was he?

17 A. He was a friend of mine, also owned Cohmad
18 Securities.

19 Q. Were you 50/50 owners of Cohmad Securities?

20 A. No. We had, I think, 24 percent of Cohmad.
21 My brother had -- I had 15, my brother had nine,
22 something of that sort.

23 Q. All right. And what was Cohmad Securities?

24 A. It was another broker-dealer.

25 Q. And where did it -- where was it located?

1 A. They were located in my office.

2 Q. Okay.

3 A. We sublet them space.

4 Q. Was it a separate independent brokerage?

5 A. Yes, uh-huh.

6 Q. Okay.

7 A. Through Bear Stearns.

8 Q. Okay. Did Mr. Maurice Cohn have an account
9 at PLMIS?

10 A. Yes.

11 Q. What was the nature of that account?

12 A. He had a split strike, you know, account
13 and I'm not sure he had a convertible account as
14 well. I don't think so. I'm not sure.

15 MR. SHEEHAN: Okay. All right. Why don't
16 we mark this?

17 MS. FEIN: Okay.

18 MR. SHEEHAN: And let's do these first;
19 all right?

20 MS. FEIN: Uh-huh.

21 MR. SHEEHAN: Okay.

22 MR. GOLDMAN: Is this 7 or is this 8?

23 MS. FEIN: This is Trustee's 8.

24 MS. CHAITMAN: Thank you.

25 MR. SHEEHAN: Yeah. Mine is.

1 MS. FEIN: It's in there.

2 MR. SHEEHAN: It's in there. It's 13A,
3 can't miss it. All right. Have to swing this down.
4 Sorry about that.

5 (Discussion off the record and Trustee's
6 Exhibit Number 8 was marked for identification.)

7 Q. (By Mr. Sheehan) Mr. Madoff, I've shown
8 you what has been now marked as Exhibit 8. It's a
9 series of notes that it actually came out of a
10 folder and the folder was called MC disbursements.

11 A. Uh-huh.

12 Q. If you look at the first page, they
13 actually made a photocopy of the folder where it
14 says that on it and it's IM 001, MC disbursements.
15 Do you see that?

16 A. Uh-huh.

17 Q. And the pages that follow were in that
18 folder; okay?

19 A. Right.

20 Q. So take a -- take a look through it because
21 I'm going to ask you about each of these pages.

22 A. Uh-huh, okay.

23 Q. Okay. Let's go to the first page. And as
24 always, I'm going to read it into the record as best
25 I can. Bernie said no --

1 MR. GOLDMAN: Forms.

2 MR. SHEEHAN: What?

3 MS. CHAITMAN: Forms.

4 Q. (By Mr. Sheehan) Forms. Hey, good.

5 Bernie said no forms for a new account or a trade
6 authorization or tax ID are needed for this account.

7 A. Uh-huh.

8 Q. Do you recognize that handwriting?

9 A. No.

10 Q. Do you remember telling anyone that with
11 regard to Mr. Cohn's accounts?

12 A. If it says Bernie said, I must have said
13 something.

14 Q. Okay. Let's go to the next page. It's a
15 form. Do you recognize the form?

16 A. This one?

17 Q. Yeah.

18 A. No, but I'm assuming that --

19 MS. CHAITMAN: Don't assume, Bernie. If
20 you know, you should say.

21 THE WITNESS: No.

22 MR. SHEEHAN: If you don't know, don't
23 know.

24 THE WITNESS: I don't.

25 Q. (By Mr. Sheehan) It's entitled, it

1 purports to be a document entitled name slash ADDR
2 file maintenance. Does ADDR mean anything to you?

3 A. ADDR?

4 Q. Yeah.

5 A. I don't know.

6 Q. Okay. So you go through this and it speaks
7 for itself, but it indicates that there's this MC
8 disbursements?

9 A. Uh-huh.

10 Q. That gives an account number of 1MOO130.
11 Do you see that up top?

12 A. Uh-huh.

13 Q. All right. And it says at the bottom,
14 again, the handwriting, I'd ask you to -- it's no
15 account papers or margin as per BLM.

16 A. Uh-huh.

17 Q. Do you see that down at the bottom?

18 A. Right.

19 Q. Do you recognize that handwriting?

20 A. No.

21 Q. Okay. Let's go to the next entry here.
22 And this purports to be it looks like note paper
23 from Cohmad Securities and it has underneath that
24 Maurice J. Cohn?

25 A. Uh-huh.

1 Q. Do you recognize that handwriting?

2 A. No.

3 Q. Now, it seems to be -- do you see the word

4 Sonny --

5 A. Uh-huh.

6 Q. -- down there?

7 A. Uh-huh.

8 Q. Does that --

9 A. Sonny Cohn.

10 Q. Was that Maurice's nickname?

11 A. Yes.

12 Q. Okay. So, again, it speaks for itself, but
13 it reads Jodi, dash, revised, underlined twice,
14 please issue a check payable to Maurice Cohn in the
15 amount of \$872,730, not \$889,000, debit MC
16 disbursements and gives the account number. And
17 then it's got what looks to be initials to the left.
18 Do you see those to the left of Sonny?

19 A. Yeah.

20 Q. Do you recognize those?

21 A. Is that an initial or is it a number? It
22 says what looks like --

23 Q. Are we looking at the same one?

24 MS. FEIN: It's this one.

25 THE WITNESS: Oh, this?

1 Q. (By Mr. Sheehan) Yeah. Where it says
2 Sonny, it looks like a J. Could that be Jodi
3 Crupi's initial?

4 A. I have no idea.

5 Q. No idea. And then it says you have my
6 deposit check?

7 A. Uh-huh.

8 Q. What, if anything, does this mean to you?

9 A. I'm not familiar with it, with any of this.

10 Q. All right. When there were deposits and
11 withdrawals out of Sonny Cohn's account, would you
12 be involved?

13 A. No. I mean, this looks like somebody said
14 disbursements. It looks to me like it's just a
15 bookkeeping procedure that they have for monies in
16 the account.

17 Q. Let's go to the next page.

18 MR. GOLDMAN: I said unless they want to
19 be on the transcript, they should tone it down.

20 Q. (By Mr. Sheehan) So the next page, which
21 is actually for Bates stamp purposes, it's AMF 105.
22 Again, it appears to be -- you know, it purports to
23 be a note pad from Cohmad Securities, Maurice Cohn,
24 dated 6-30-98. And again, it speaks for itself, but
25 I'll read it. Dear Jodi, dash -- Jodi, by the way,

1 is spelled J-o-d-i -- please issue a check in the
2 amount of \$500,000 payable to Maurice J. Cohn. As
3 discussed, debit MC disbursements. Also, please
4 deposit this check at Chase Bank. A deposit slip is
5 enclosed. Thanks, Sonny. Do you recognize this to
6 be Mr. Cohn's handwriting?

7 A. Which page are you on now?

8 Q. It's dated out in the corner 6-30-98.

9 A. Okay. What was your question?

10 Q. I said do you recognize this to be Sonny
11 Cohn's handwriting?

12 A. You know, not really, but I'm assuming it's
13 on Cohmad Securities' note pad. So Maurice Cohn,
14 looks like his personal pad.

15 Q. It says copy to BLM. That's your initials;
16 right?

17 A. Okay, yeah.

18 Q. All right. Do you ever recall -- do you
19 recall ever seeing these kind of notes coming to
20 you?

21 A. I assume so.

22 Q. And then it says this should be done on or
23 about July 2?

24 A. Yeah.

25 Q. Does July 2 have any significance to you?

1 A. No.

2 Q. Okay. Let's go to the next page.

3 Actually, let me look at these. Maybe we're just
4 repeating ourselves. Okay. The next two are
5 similar notes. I'm going to pass over those for the
6 record. They're AMF 106 and AMF 107. I can ask
7 about them later, but for our purposes they're the
8 same. Then we get to the last page of this exhibit.
9 Let me just ask you a question about that.

10 And it's again a note purports to be from
11 Maurice Cohn dated 1-9-96. It says Dear Jodi, as
12 discussed, deposit my check before January 16 so I
13 can share my winnings with Uncle Sam. Thanks,
14 Sonny. And then below that it says please mail the
15 deposit slip receipt to me and gives his name and
16 address. Do you see that?

17 A. Uh-huh.

18 Q. Do you recall discussing with -- well, let
19 me rephrase this. Do you have any understanding why
20 he referred to the deposit as winnings?

21 A. It says winnings with Uncle Sam.

22 Q. Yeah. Share my winnings. Why would he
23 call winnings --

24 A. Looks like he's referring to Uncle Sam,
25 what his profits were with the government, with

1 Uncle Sam, the taxes on it.

2 MR. SHEEHAN: Okay. Let's get out the
3 statements. This is eight?

4 MS. FEIN: It's nine.

5 (Trustee's Exhibit Number 9 was marked for
6 identification.)

7 Q. (By Mr. Sheehan) Nine. Let's take a break
8 after this; okay? All right. Take a break after we
9 go through this one.

10 A. Okay.

11 Q. Or you need one now? It doesn't matter.

12 A. No. I'm fine.

13 Q. You're okay? All right. Oh, it's in my
14 book; right?

15 MS. FEIN: Yes. This is another
16 compilation of statements. Because some of them are
17 harder to read, so we pulled several months. So
18 they're all for the same account, but the time
19 period varies.

20 Q. (By Mr. Sheehan) Yeah. The first page is
21 very blurry, but I think they gets succeedingly
22 better as we go through them, but this is what the
23 documents purport to be are account statements for
24 MC Disbursements, care of Maurice Cohn and it gives
25 his address as 121 Wall Street. I'm not going to

1 date on the first one. As a matter of fact, I'm
2 thinking we should just skip it. It's here for
3 record purposes. What it shows is three checks. Do
4 you see that?

5 A. Uh-huh.

6 Q. The first page? I'll ask you about this.
7 And each of them says after the check, it says CW
8 under all three. What is that?

9 A. Capital withdrawal.

10 Q. And can you make out the total?

11 A. \$55,000.

12 Q. Yes, okay.

13 A. Uh-huh.

14 Q. All right. Now, there's no other entry on
15 here. No stock?

16 A. Uh-huh.

17 Q. No transactions?

18 A. Right.

19 Q. Just cash out?

20 A. Right.

21 Q. What do you understand this transaction to
22 be?

23 A. It looks like just like a bookkeeping
24 account. It doesn't look like it's a transaction
25 account.

1 Q. Okay.

2 A. Because I don't see any transactions on
3 here.

4 Q. Were you paying Sonny Cohn for any
5 services --

6 A. Yes.

7 Q. -- he was providing?

8 A. Uh-huh.

9 Q. What were those services?

10 A. He was -- well, Cohmad Securities was
11 executing our business on the floor, what's called
12 dot business because they had dot machines through
13 Bear Stearns, which we were not a member of the
14 exchange, you know, so we didn't have those
15 machines.

16 So they executed business for us, you know,
17 for my market makers from the dot business. Plus,
18 Sonny Cohn also brought business into the firm as
19 well and he also performed other services for the
20 firm.

21 Q. Just for the record, what's a dot business?

22 A. Dot business is brokerage business that
23 when we put an order on the floor of the exchange,
24 it goes down to the specialist post on the exchange.

25 Q. Okay. Just staying with the first page,

1 Mr. Madoff --

2 A. Uh-huh.

3 Q. -- could this be a payment to Mr. Cohn for
4 those services?

5 A. It could be.

6 Q. All right. Would it be your practice to
7 use a customer account to make payments like that?

8 A. I'm not sure.

9 Q. Well, in other words, rather than write him
10 a -- you know, just a check or something else, you
11 used a customer account and put the money through
12 the customer account?

13 MS. CHAITMAN: I'm objecting to form.

14 THE WITNESS: No.

15 MS. CHAITMAN: I don't see any evidence
16 that this is a customer account.

17 THE WITNESS: Yeah. This looks like a
18 journal, a type of journal account.

19 Q. (By Mr. Sheehan) Well, I think the number
20 at the top, 1-01329-30, is a customer account
21 number.

22 A. It's just referring -- yeah, but that's
23 referring to his -- his customer account number; but
24 if there's no transactions on there, this looks like
25 a journal account.

1 Q. What's a journal account?

2 A. When -- you know, when money is flowing
3 through the account, either we're receiving in
4 checks or sending out checks. It says MC
5 Disbursements, so that means that we're paying him
6 money.

7 Q. Right.

8 A. They're just using -- those books are like
9 a bookkeeping account. If there's no transactions
10 on it, it's not really an account where we're buying
11 and selling securities for them.

12 Q. So if you're just disbursing money to them,
13 why would you use a customer account for that?

14 MS. CHAITMAN: Objection to form.

15 THE WITNESS: I have no idea.

16 MR. SHEEHAN: Okay.

17 THE WITNESS: I mean, that's not something
18 that I'm familiar with.

19 Q. (By Mr. Sheehan) Okay. Because it does
20 say -- you see on this, it also says or when I asked
21 you, look down -- actually, we can stick with the
22 first page. It's so blurry, but we can read it.
23 See where it says on the left-hand side under the
24 name and address?

25 A. Uh-huh.

1 Q. You see the words long and short?

2 A. Right.

3 Q. Don't those always appear on a customer
4 statement?

5 A. Yeah. Well, they're using a format of the
6 customer account it looks like, but it's not --

7 Q. Right.

8 A. But there's no transactions on there, so --

9 Q. All right. So let's -- let's go in four
10 pages to April 30, 1989. And what it's showing is
11 the balance forward showing it as a debit of
12 \$734,000. Do you see that?

13 A. Yes.

14 Q. And the initial, then there's three checks?

15 A. Uh-huh.

16 Q. Which brings the total up to \$892,000?

17 A. Right.

18 Q. What was the purpose of keeping this debit
19 balance running?

20 A. Obviously, it looks like from the checks
21 that were issued to him.

22 Q. Right. Again, there's no transactions
23 here; are there?

24 A. No.

25 Q. Now, we go to the next page if you would,

1 which is 6-30-89. The balance is then brought up to
2 \$900,000, two more checks and it's now a million
3 225. Do you see that?

4 A. Uh-huh.

5 Q. And, again, no transactions; right?

6 A. Right.

7 Q. So we're not going to keep doing this. All
8 right. Let's go to the one -- next one is 4-30-95,
9 the one that looks like this, Mr. Madoff.

10 A. Uh-huh.

11 MS. FEIN: I have it over here.

12 Q. (By Mr. Sheehan) All right. So this shows
13 that the new balance as of April 30, '95 is six
14 million -- or 16 million. I'm sorry. \$16,754,000.
15 Do you see that?

16 A. Yeah.

17 Q. What was -- what were you paying Mr. Cohn
18 \$16 million for?

19 A. \$16 million for?

20 Q. Yeah. It says your cash adds up to new
21 balance of \$16,754,393. There's not a single
22 transaction and the only thing is checks going out
23 to him totaling that amount of money. So what were
24 you giving him \$16 million for?

25 A. Well, first of all, Maurice Cohn was

1 getting a -- a payment for the accounts that he
2 refers -- like all his salesmen, Cohmad was
3 referring clients to us that we were doing -- when
4 was this? In '95 that we were doing, you know,
5 arbitrage transactions. They were referring clients
6 to us and he was getting a fee, a percentage.

7 I don't remember exactly what the fee was,
8 whether it was, you know, two percent or whatever it
9 is of all of their customer, you know, balances in
10 their account. So I don't know. Sixteen million
11 seems like a large amount, but I don't know; but
12 that could have been, you know, based upon all of --
13 you know, all of their customers for -- he had a
14 whole bunch of salesmen at Cohmad.

15 Q. I'm not so sure I understood that, so let
16 me ask you a question.

17 A. In other words, Cohmad referred clients to
18 us and they got a -- he got a fee based upon the
19 balances just like the woman by the name of Sonya
20 Cohn. He had salesmen that got -- that referred
21 hedge fund business to us and so on and he got a
22 percentage, a referral fee for that.

23 Q. Based on the balance?

24 A. The amount of monies that the clients had
25 sent in in their accounts to manage.

1 Q. If the --

2 A. It was a referral fee.

3 Q. I understand.

4 A. Uh-huh.

5 Q. If the clients took the money out, would
6 the amount that you paid him go down?

7 A. Would have been -- would have been debited,
8 yeah. Would have been deducted.

9 MR. SHEEHAN: Okay. Take a break here.

10 THE VIDEOGRAPHER: Going off the record.

11 The time is 12:33 p.m.

12 (A recess was taken.)

13 THE VIDEOGRAPHER: Back on the record.

14 This begins disc number three. The time is
15 12:50 p.m.

16 Q. (By Mr. Sheehan) Mr. Madoff, do you
17 remember earlier today I was asking you about what I
18 characterized as a 302 statement? Do you remember
19 that?

20 A. Yes.

21 Q. Okay. These are statements that are
22 prepared by the FBI following the interview such as
23 the one they had with you?

24 A. Uh-huh.

25 Q. I'm stating that not for the truth of it

1 but just for context.

2 MR. GOLDMAN: I don't think it's the 302;
3 was it?

4 MR. SHEEHAN: They call it 302s.

5 MR. GOLDMAN: It was a 201.

6 MR. SHEEHAN: No. It's a 302. If
7 anything today that I'm pretty sure of.

8 MR. GOLDMAN: Okay.

9 MR. SHEEHAN: I'm not arguing with you,
10 Peter.

11 Q. (By Mr. Sheehan) So it's December 16th,
12 19 -- 2008?

13 A. Uh-huh.

14 Q. It's several days after the arrest, and
15 you're telling them as I understood what you said
16 earlier how the fraud came about; is that correct?

17 A. Correct.

18 Q. Right. Do you remember telling them that
19 it started in the 1960s?

20 A. No.

21 Q. Do you know that the 302 statement says
22 that not only once but three different times that
23 you said it started early?

24 MS. CHAITMAN: Do you have the 302
25 statement?

1 MR. SHEEHAN: I can't get it.

2 THE WITNESS: I never would have said
3 that.

4 MR. SHEEHAN: I'm in the process of trying
5 -- let me explain this for the record. I'm sorry,
6 Mr. Madoff. I'll give you a chance. That is, that
7 we went down to look at it, Helen, and they let us
8 review it and then I asked for a copy and they
9 refused. What we've done is we've prepared what's
10 called a Touhy letter to request it and they have
11 that under consideration. The U.S. Attorney moves
12 at its own speed, so I don't have it.

13 I am attempting to get it. In the
14 meantime you can do what I did and that is ask to
15 see it, and they will accommodate you and let you
16 read it; but, unfortunately, they will not give us a
17 copy as yet. I don't see any reason why they
18 wouldn't because the case is essentially over from a
19 criminal perspective.

20 And 302s are, you know, given out as Brady
21 statements and everything else, so but I don't have
22 it here and I apologize for that, but I wish I did.

23 THE WITNESS: Let me clear something up.
24 During the proffer agreement, the proffer meeting,
25 they asked me to explain the history of the firm;

1 okay?

2 MR. SHEEHAN: Right.

3 THE WITNESS: And at that point I said we
4 started in 1960. That was the only reference that
5 was ever made to 1960 was that their firm started in
6 1960, and that's when I started doing business. And
7 then I gave a history of the firm from 1960. And,
8 you know, I said I started, you know, with -- I sold
9 new issues to clients. And the new issue market
10 collapsed and didn't work out.

11 That's when I got into the fact that I had
12 to borrow \$30,000 to make my customers whole, but
13 there was never any discussion of fraud starting in
14 1960 because it didn't. So I never would have made
15 that statement. The only referral to 1960 was when
16 the firm started.

17 Q. (By Mr. Sheehan) So when the FBI wrote
18 down that you told them the fraud started in the
19 '60s, they were wrong?

20 A. I said the firm started in the '60s, not
21 the fraud started in the '60s.

22 Q. Well, the FBI wrote down that the fraud
23 started --

24 A. Well, I can't help what they wrote down,
25 but --

1 Q. Well, they wrote down that you had borrowed
2 the \$30,000 because your business had failed.

3 A. No. I didn't say the business had failed.
4 What I said to them was, and I remember this very
5 clearly because this was in the book and I told
6 Diana Henriques, what happened was the firm started
7 in 1960. Sometime in 1962, I believe it was, I -- I
8 sold two new issues to a handful of customers. They
9 were actually -- most of them were my relatives.

10 And that was then the new issue -- with
11 the Cuban Missile Crisis happened in '62, the new
12 issue market collapsed. Remember, the tape ran
13 until like 9:00 o'clock at night, you know, at that
14 time, the ticker tape. The new issue market
15 collapsed and the underwriters, the two underwriters
16 of the new issues that were supposedly in there
17 making a mark and supporting the issue, you know,
18 walked away.

19 So there was no liquidity in those stocks,
20 so the stocks -- these stocks came out at \$2 a
21 share. They went down to one bid, two offer. That
22 was the quote. So the customers theoretically lost,
23 you know, 50 percent of their money. Then there was
24 -- the total investment that they had made was
25 \$30,000. I felt, you know, guilty because of the

1 fact that, you know, they bought the stock because I
2 told them to buy the stock. It was the first time I
3 ever did retail business with these clients.

4 The capital of the firm -- so I had to
5 come up with \$30,000. I didn't have to. I chose to
6 give the customers -- buy the customers back their
7 stock at the offering price, \$2 a share, which is
8 what it was initially sold to them at. That market
9 was one-two, which is a very wide spread; but that's
10 the way those stocks traded, you know, during that
11 period of time.

12 So because I decided I wanted to take the
13 customers out, buy their stock back at \$2 a share,
14 it cost me \$30,000. And that would have used up all
15 the capital of the firm, so I borrowed \$30,000 from
16 my father-in-law to pay them back. That was the
17 whole issue with that.

18 That's when I said to you that when the
19 SEC came in to do an examination at a much later
20 date and they saw that I did that, that was when
21 they said to me -- as a matter of fact, the
22 examiners said Bernie, you know, you didn't have to
23 buy this stock back from the customers.

24 You never guaranteed them anything. And I
25 said I know. I told them exactly what I just said

1 now and I felt guilty about it. And, you know, I
2 made a decision to do that. They said, well, you
3 know, if you're going to keep on doing this, you're
4 going to run out of money. You know, they sort of
5 like made a joke out of the whole thing, but there
6 was never -- that was the whole episode with the --
7 with the \$30.

8 And then Diana Henriques in her -- when
9 she wrote the book, which I was really annoyed at
10 her about and I spoke to her about that, she said,
11 well, I really mischaracterized it. You know, they
12 said that -- what did she say? That I did things
13 that I really didn't have to do or something of
14 that, which was true. I didn't have to do that, you
15 know. She thought it was like foolish of me to do
16 that.

17 Q. You started the retail business, again, in
18 the '60s; didn't you?

19 A. No. I mean, you know, after that issue
20 with the new issue business, I basically started
21 just doing arbitrage transactions. I had a couple
22 of -- a couple of customers that -- one was the name
23 of Steinberg. They were relatives of my -- clients
24 of my father-in-law.

25 Q. Didn't you lose the money again?

1 A. No.

2 Q. Didn't you then start the Ponzi scheme in
3 the '60s?

4 A. No.

5 Q. Do you recall telling the FBI that it began
6 -- it really started in earnest in the '70s?

7 A. No.

8 Q. And that it grew much larger in the '80s?

9 A. No.

10 Q. So all those things they wrote down were
11 wrong?

12 A. I certainly never said that.

13 Q. So they're lying?

14 A. I won't say they're lying. Maybe they
15 misunderstood me. I don't know.

16 Q. They wrote it down, declarative statements,
17 started in the '60s, '70s and '80s.

18 A. No.

19 Q. So they made that up?

20 A. I'm not saying they made it up. I don't
21 know what they -- how they interpreted. You know, I
22 --

23 Q. What's to interpret? You either started
24 the fraud or you didn't.

25 A. I didn't. So I don't know why they would

1 say it. I may have been referring to what -- what
2 business I did, you know. They asked me when did I
3 start the arbitrage business and, you know, I told
4 them, you know, what I started doing, when I started
5 doing the market making business and so on.

6 Q. Mr. Madoff, December 16th you're talking to
7 the FBI and the U.S. Attorney?

8 A. Uh-huh.

9 Q. You told us earlier you were telling the
10 truth?

11 A. Right.

12 Q. Now is the time to tell us the truth.
13 Again, the fraud started in the '60s and '70s just
14 like you told the FBI?

15 A. I never told the FBI that.

16 Q. So they're lying?

17 A. Characterize it any way you want. I'm just
18 saying --

19 Q. Well --

20 A. -- I never said that to them.

21 Q. -- let me ask you something else. You lied
22 to Denny Chin; didn't you?

23 A. To Denny Chin, no.

24 Q. Yeah, the judge. When you allocuted, you
25 lied?

1 A. Hmm?

2 Q. You lied to Judge Chin during your
3 allocution?

4 A. No, no.

5 Q. You told him nothing happened after 1992.
6 That's a lie?

7 A. I didn't tell him nothing happened after
8 '92.

9 Q. You said the fraud started at your
10 allocution, you said it started --

11 A. At '92.

12 Q. Ms. Chaitman quotes it all the time. You
13 said it started in 1992?

14 A. Correct.

15 Q. You've testified here that it started
16 earlier than that with backdated trading and other
17 activities for the big four?

18 A. I said the Ponzi scheme, that's when it
19 started, in 1992. I never -- didn't say that there
20 were backdating of trades prior to that. I said
21 that.

22 Q. Didn't you want to give Judge Chin the
23 impression that you were clean as a whistle up until
24 1992?

25 A. No.

1 Q. So you're swearing here today you never
2 lied to Judge Chin?

3 A. No.

4 Q. All right. Want to think about that?

5 A. Yeah. I'm telling you that.

6 Q. All right.

7 A. I'm telling you that they asked me when the
8 Ponzi scheme started, you know, and I said the Ponzi
9 scheme started in 1992.

10 Q. But --

11 A. The backdating of trades never came up with
12 Denny Chin.

13 Q. Mr. Madoff, for the last 16 years of your
14 professional life by your own admission you lied for
15 a living; isn't that true?

16 A. For the last 16 years, yeah.

17 Q. Yeah. You lied for a living?

18 A. Yeah.

19 Q. Right. But now we're supposed to believe
20 that you're telling us the truth?

21 A. You're asking me now, I have nothing to
22 lose now.

23 Q. Aren't you trying to rehabilitate yourself?

24 A. No.

25 Q. You're trying to make everybody think that

1 you were a good guy until '92 until the big four put
2 the screws to you?

3 A. That's correct.

4 Q. Yeah. But that wasn't true; was it?

5 A. No. It was true.

6 Q. You were phony in the '80s?

7 A. No. It's not true.

8 Q. So David Kugel, Annette Bongiorno, the FBI,
9 everybody is lying except you?

10 A. You make your own decision. I'm telling
11 you --

12 Q. I have.

13 A. All right. So what can I tell you?

14 Q. All right.

15 A. We have a right to disagree.

16 Q. So someone who lies for a living for
17 16 years wants us to believe what he's saying, but
18 other people whose freedom was at risk just like
19 yours told the truth?

20 MS. CHAITMAN: Objection to form.

21 THE WITNESS: I can't respond to that.

22 MR. SHEEHAN: All right. I'm done.

23 MS. CHAITMAN: Mr. Madoff --

24 MR. GOLDMAN: You were lying to us. You
25 said an hour.

FURTHER EXAMINATION

BY MS. CHAITMAN:

Q. The U.S. Attorney accepted your plea that the fraud began in 1992; is that right?

A. As far as I know.

Q. And can you tell us the circumstances of the U.S. Attorney stating in your presence that he had no evidence that the fraud began before 1992?

A. My attorneys came in to me and told me that when they were trying to determine my forfeiture over what the forfeiture settlement should be, how much money they should leave my wife, my baby, because it really involved my wife, they originally came in and said they were going to -- they were, you know, going to leaving her with \$100,000 or something of that sort.

And I said no. I said that's -- if you're going to leave her \$100,000, I'm going to go to trial. You know, I'm not going to accept that. So they then came back. Ike Sorkin came back and Peter Chavkin into the room and said to me that now the U.S. Attorney, you know, in New York interceded and said that they have -- they have no evidence that the fraud started prior to what I said in 1992, so they were going to settle on \$2,500,000. That was

1 what the U.S. Attorney said.

2 Q. And the \$2,500,000 represented what?

3 A. Represented my homes that were bought in
4 1980, 1983, and it was part of the assets of the
5 hundred million dollars worth of assets that Ruth
6 volunteered to turn over to the -- to the U.S.
7 Attorney.

8 Q. Okay. So just to be clear, am I correct in
9 saying that Ruth offered to turn over \$100 million
10 in assets?

11 A. Right.

12 Q. But she wanted to keep two-and-a-half
13 million?

14 A. Well, she didn't pick the Number
15 2-and-a-half million dollars. She just said that,
16 you know, she wanted enough money to live on. And,
17 you know, and they asked me -- you know, they came
18 to tell me what was I willing to accept? And I said
19 I was certainly not willing to accept \$100,000 of
20 \$100 million of assets.

21 And they went back and forth and then they
22 came back in and said the U.S. Attorney said he has
23 no evidence that the fraud started earlier than what
24 I had said. So, therefore, he is -- they leave the
25 two-and-a-half million dollars.

1 Q. Okay. And, in fact, you're aware that
2 Frank DiPascali pled after he was indicted, he pled
3 to --

4 A. Right. From what I read, you know, in the
5 -- in the newspapers and what I was told was that he
6 -- he stated in front of the judge that the fraud
7 started in '92.

8 Q. Okay.

9 A. It started in the '90s, he said. And then
10 at a later date I guess as part of his plea
11 agreement he said, well, it may have started in the
12 late '80s, he wasn't sure, '92, you know, but that
13 was --

14 Q. But he testified that it was with a split
15 strike?

16 A. Yes.

17 Q. Okay. Now, do you think that you -- do you
18 have any reason to believe that your prison sentence
19 would have been longer if you had told the U.S.
20 Attorney that you started the fraud earlier than
21 1992?

22 A. What is the question?

23 Q. Do you have any reason to believe that your
24 criminal sentence would have been longer if you had
25 told the judge, Judge Chin, in your plea that the

1 fraud began earlier than 1992?

2 A. No.

3 Q. You understand, don't you, that SIPC saves
4 money by saying the fraud began in 1960? Do you
5 understand that?

6 A. No. I'm not really --

7 Q. Well, do you understand that SIPC is
8 required to insure customer accounts up to \$500,000
9 per account?

10 A. Yeah, uh-huh.

11 Q. And do you understand that in this case Mr.
12 Picard was successful in persuading the courts that
13 the customers should not be credited with any
14 appreciation because he claimed that from the 1960s
15 on you never purchased any securities?

16 A. Right.

17 Q. So SIPC has saved well over \$1 billion by
18 virtue of the allegation that the fraud began in
19 1960.

20 A. Okay.

21 Q. Did you save any money by virtue of --

22 A. No.

23 Q. -- claiming that the fraud began in 1992?

24 A. No.

25 Q. Now, Mr. Sheehan made the point that in the

1 1980s you refused to give your customers electronic
2 access because you were not doing the trades
3 reflected on the convertible arbitrage customer
4 statements. Was electronic access available at all
5 in the industry in the 1980s?

6 A. No.

7 Q. If electronic assess had been available in
8 the 1980s, would it have been available to allow
9 customers to access the over-the-counter market?

10 A. No.

11 Q. In fact, to this day is there to your
12 knowledge any electronic access via retail customer
13 to the over-the-counter market?

14 A. First of all, let me explain to you what
15 electronic access is. Electronic access has nothing
16 to do with the market. Electronic access allows a
17 customer to get his confirmations and his statements
18 electronically through DTC. DTC put in a system
19 called the DTC ID system, which was basically
20 designed for institutions.

21 ID stands for institutional, you know,
22 something or other system. So rather than have the
23 customer get confirmations, you know, by sending out
24 a statement or a confirmation, you know, like we
25 would do, the customer could electronically get the

1 information directly from DTC. The only ones that
2 really did that were the smaller hedge funds who
3 really didn't have operations departments and so on.
4 In order for them to save money, they allowed their
5 customers to get electronic access.

6 Quite frankly, you know, most firms would
7 not give anybody electronic access because you were
8 subjecting your computer systems to people to get in
9 there, you know, through fraud, like maybe cyber
10 things like people are having problems today with
11 their banking and so on. So, quite frankly, I would
12 never allow electronic access into my system because
13 our system has, you know, a huge amount of
14 proprietary information available.

15 And, quite frankly, even within DTC the
16 industry, you know, had problems with it because the
17 DTC, the same reason that an accounting firm that
18 wants to see what the firm has in their DTC
19 inventory, DTC would not give it to that. They have
20 to give it to a regulator, but they don't have to
21 give it to an accounting firm and they don't give it
22 to an accounting firm.

23 Q. Now, in the 1980s what was the volume of
24 convertible bond trading that you did through Bear
25 Stearns?

1 A. I couldn't tell you, but it was
2 substantial. We did convertible -- we were one of
3 the largest market makers in convertible securities
4 in the country. So we were doing -- and, you know,
5 and again, convertible securities is not only
6 convertible bonds. You know, it's convertible
7 preferreds, units, warrants, rights. There's -- you
8 know, and we participated in all of -- all of that.

9 And as a matter of fact, we ran an ad in
10 the Wall Street Journal in 19 -- I guess it was
11 around '83 or '84, whatever the break-up was that we
12 made markets in all the telephone issues. And we
13 were one of the largest market makers doing the
14 arbitrage in the convertible securities.

15 Q. Now, Mr. Sheehan was questioning you --
16 excuse me -- about Mr. Blecker's statements where it
17 appeared that fractional shares were credited to his
18 account before you actually purchased the
19 securities?

20 A. Uh-huh.

21 Q. Now, first I want to clarify something.
22 Mr. Sheehan was asking you using David Kugel as an
23 example whether David Kugel was deprived of
24 compensation on a convertible arbitrage transaction
25 that he might have done because you then took those

1 securities and sold them to your investment advisory
2 customers.

3 Am I correct in saying that they were
4 completely separate transactions? In other words,
5 David Kugel was a trader. He would do a transaction
6 and he would generate potentially a profit or a
7 loss?

8 A. Correct.

9 Q. But he would acquire securities; is that
10 right?

11 A. Uh-huh.

12 Q. And then they became firm securities?

13 A. It depends. Sometimes they did. Well,
14 they were always firm securities because, you know,
15 they were firm securities while he was -- you know,
16 while he was a market maker also; but they may have
17 been in the market making, his market making account
18 as opposed to the firm's investment account or
19 trading inventory account.

20 Q. And then would you then turn around and
21 take some of those securities and sell them to the
22 investment advisory customers after David Kugel had
23 completed his transaction?

24 A. That's correct.

25 Q. So you're selling those securities or

1 fractions of those securities to the investment
2 advisory customers. Was it a completely separate
3 transaction from anything David Kugel could have
4 done beforehand?

5 A. That's correct.

6 Q. Okay. Now, can you explain why a
7 fractional share -- and, of course, we don't have --
8 if you could look at this first, this document? No.
9 This is not it. Hold on. I just want to find
10 the -- this is not -- hold on one second. I'm
11 showing you Exhibit 1, Trustee's Exhibit 1. If
12 you'd look on the second page of that?

13 A. Oh, before -- I want to -- I want to
14 address this FBI issue again.

15 Q. Go ahead. You can.

16 A. And I stated this before today. During the
17 proffer agreement when I was discussing how we did
18 our business and I was talking to you about what I
19 -- how I did customer business, they asked me did
20 you ever short stock to a customer? You know, and I
21 said, of course, I shorted stock to a customer at
22 times, you know. I said that was what market makers
23 did. You know, they short stock to the customer.

24 And they said you mean you sold stock to a
25 customer that you didn't own? And I said -- and I

1 looked at, you know, the SEC who was sitting there
2 and everyone in the room and I said wait a minute.
3 I said are you asking me -- you know, you're acting
4 as if there's something wrong with me shorting stock
5 to a customer, selling stock to -- and now, of
6 course, the FBI has no clue with what the markets
7 work, you know.

8 So they made a big issue of you sold stock
9 to a customer that you didn't own. And as a matter
10 of fact, I turned to the SE -- two people from the
11 SEC there and I said listen, guys, help me out here.
12 I said for some reason you're acting surprised that
13 a market maker sold stock short, you know. And we
14 went through that whole routine. Now, whether for
15 some reason the SEC determined that by me selling
16 stock to a customer that I didn't own, that that was
17 a fraud.

18 Q. You mean the SEC or the FBI?

19 A. The FBI. But no one answered anything. I
20 said -- everyone like was -- the SEC was very
21 embarrassed because they were sitting there. They
22 never opened up their mouth during this whole
23 proffer agreement. And then I -- you know, I
24 conceded and started saying yes, market makers can
25 sell stock short to a customer and so on. So if the

1 FBI who was not professional sitting in a room and
2 listening to this going back and forth because the
3 U.S. Attorney was the one -- Marc Litt was the one
4 that was saying you mean you sold stock to a
5 customer that you didn't own as if like this was
6 something wrong.

7 And I started to get annoyed at him
8 because they said -- you know, it was almost like
9 what is this? Like a joke? You all of a sudden
10 this is -- you have professionals in here, the SEC,
11 and you're acting -- you're acting as if there's
12 something wrong with that? I said that's what
13 market makers do.

14 Now, if the FBI interpreted that as being
15 a fraud because that's what the SEC -- that's what
16 the U.S. Attorney was sort of like insinuating. If
17 that's how they -- why they started writing this
18 down, I don't know, but clearly I never, you know,
19 made that statement.

20 Q. Okay. Turning to the third page of
21 Trustee's Exhibit 1 --

22 A. And don't they record this conversation
23 there? Isn't that -- they don't record that?

24 MR. GOLDMAN: They take notes. Hopefully,
25 they take notes.

1 Q. (By Ms. Chaitman) Turning to page three of
2 Trustee's Exhibit 1 --

3 A. And by the way, Picard was at that meeting,
4 wasn't he, at the proffer agreement?

5 MR. SHEEHAN: No. He was not.

6 THE WITNESS: I'm pretty sure he was. No?

7 MR. SHEEHAN: Well, you would be wrong
8 about that, too, Bernie.

9 THE WITNESS: Oh, okay. Somebody was
10 there from the Trustee.

11 MR. SHEEHAN: George Stamboulidis.

12 THE WITNESS: Oh, okay.

13 Q. (By Ms. Chaitman) Again, my third try at
14 this.

15 A. Yes, right.

16 Q. Mr. Sheehan made a great deal about the
17 fact that on September 30th, 1986 on Mr. Blecker's
18 statement you reflected a journal entry of \$55.13
19 for TRW, Inc. fractional shares. Do you see that?

20 A. Yes.

21 Q. Okay. And then Mr. Sheehan pointed out is
22 that it wasn't until the November 30th, '86
23 statement that you show a long position in TRW
24 shares, and it says received. Is it possible that
25 the fractional shares were actually acquired on

1 September 30th but not received until November 7th?
2 That would be a month and seven days.

3 A. The -- again, I don't know how they handled
4 the fractional shares. The receive and deliver that
5 appears on a statement is -- is an entry that is
6 either -- that's the position is closed out. In
7 other words, it means that either the conversion was
8 completed and when it got entered into the customer
9 account.

10 The actual conversion might have been
11 completed, you know, a month after we did the
12 transaction; but, you know, it actually got
13 journaled into the customer account at a later date
14 when it gets moved into from the operations side,
15 you know. For example, if we -- if we sent it to a
16 bank to be converted, all right, they may -- they
17 may -- the conversion may have come through a month
18 after they put it into conversion.

19 They may have not sent it to us, you know,
20 until two weeks after that. That's a matter of, you
21 know, of the processing. So how the journal, you
22 know, gets or if, in fact, my office put through the
23 distribution of the fractional share into the
24 customer's account when the transaction was set up
25 because they did that because they know that that's

1 what they're going to get on the date rather than
2 later on. I don't know what the process is, but it
3 doesn't mean anything.

4 MS. CHAITMAN: Okay. I have no other
5 questions.

6 MR. SHEEHAN: Just one or two more.

7 FURTHER EXAMINATION

8 BY MR. SHEEHAN:

9 Q. Ms. Chaitman just now asked you about the
10 U.S. Attorney, and the U.S. Attorney at your plea
11 said that the fraud started from 1992 forward. Do
12 you remember that question?

13 A. She asked me what?

14 Q. That the U.S. Attorney and you were on the
15 same page that the fraud started in '92 and went
16 forward. Do you remember that?

17 A. I just --

18 Q. Well, the record speaks for itself. Do you
19 have any recollection of it?

20 A. The only thing I recollect was that Ike
21 Sorkin and Peter Chavkin came in. This was when I
22 was in the jail in New York and said to me that --
23 they said that the U.S. Attorney said that he had no
24 evidence that the fraud started before I claimed
25 whatever the date was, and that's why he decided to

1 make the settlement of two-and-a-half million
2 dollars. That's my recollection.

3 Q. Just to complete the record then, this is
4 your allocution that was actually marked as D
5 Exhibit two at your deposition on December 20, '16.

6 A. Uh-huh.

7 Q. And on page 31 it reads, this is the Court
8 speaking, does the government believe Mr. Madoff's
9 admission to cover the elements of the crime of each
10 count? Mr. Litt, who I think you previously
11 identified as the prosecutor, answered yes, your
12 Honor.

13 The government does not entirely agree with
14 all of the Defendant's description of his conduct.
15 However, the government does believe that his
16 allocution does cover each of the elements of the
17 charged defenses. The Court: Would you summarize
18 what the government's evidence would be if the
19 Defendant were to go to trial?

20 Mr. Litt: Yes. If this case proceeded to
21 trial the government would have proven through
22 testimony and evidence beyond a reasonable doubt all
23 the facts set forth in the criminal information. In
24 the summary the government would have proven, colon,
25 the Defendant operated a massive Ponzi scheme

1 through his company, Bernard L. Madoff Investment
2 Securities, beginning at least as early as the
3 1980s. Over the decades working from his New York
4 City office Madoff solicited and caused others to
5 solicit prospective clients to open accounts with
6 his companies.

7 His clients included individuals,
8 charitable organizations, trusts, pension funds and
9 hedge funds, among others, and those clients were
10 also his victims. Let me stop reading there. I
11 think it speaks for itself.

12 A. Well, he's saying in the 1980s; right?

13 Q. Yes.

14 A. Not saying 1962.

15 Q. He said at least the 1980s, so --

16 A. Okay. Well, that's the 1980s. Now, you
17 know --

18 MR. GOLDMAN: Bernie, there's no question.

19 MR. SHEEHAN: No question.

20 THE WITNESS: Okay.

21 FURTHER EXAMINATION

22 BY MS. CHAITMAN:

23 Q. But Mr. Madoff, didn't the fraud, in fact,
24 start in the 1980s?

25 A. No.

1 MS. CHAITMAN: Okay. I have no further
2 questions.

3 MR. SHEEHAN: I'm done.

4 MS. CHAITMAN: We're done.

5 MR. GOLDMAN: Okay. I've only got about
6 two hours worth, so --

7 MR. SHEEHAN: That's one thing I know is
8 not true. A lot of things I don't know is true.
9 That I know is not true.

10 THE VIDEOGRAPHER: This concludes the
11 deposition. Going off the record at 1:24 p.m.

12 (Reading and signing of the deposition by
13 the witness was waived and the deposition was
14 concluded at 1:24 p.m.)

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C E R T I F I C A T E

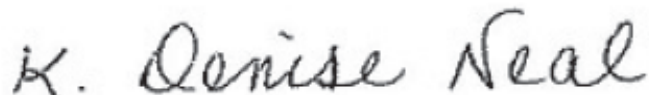
NORTH CAROLINA:

GUILFORD COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 211 through 384 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 10th day of May, 2017.



K. Denise Neal, RPR
Registered Professional Reporter
Notary Public No. 200517500101

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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